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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ANIMALS FOR RESEARCH AMENDMENT ACT

THURSDAY, JANUARY 19, 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitution:

Cooke, David R. (Kitchener L) for Mr. Black

Clerk: Mellor, Lynn

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Witnesses:

From the Canadian Council on Animal Care:

Rowsell, Dr. H. C.

From Partners in Research:

Calhoun, Ronald G., Executive Director

Borwein, Dr. Bessie, Associate Dean, Research, Faculty of Medicine, University
of Western Ontario

From the Physicians Committee for Responsible Medicine:

Barnard, Dr. Neal D.

From Beauty without Cruelty:

Dixon, Cali Alann



LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, January 19, 1989

The committee met at 4:36 p.m. in committee room 1.

ANIMALS FOR RESEARCH AMENDMENT ACT

Consideration of Bill 190, An Act to amend the Animals for Research Act.

Mr. Chairman: The standing committee on resources development will come to order. We are here this afternoon to have public presentations on Bill 190, An Act to amend the Animals for Research Act, Mr. Wildman's private member's bill.

I should first of all—"apologize" may not be the right word—extend my sympathy to those groups that have been so patient as the machinations around this place take their course. I am pleased that we are at least able to salvage an hour and a half or so this afternoon to deal with presentations. I should tell you that the Legislature adjourns at six, and we must adjourn at six because that is when the Legislature adjourns. We cannot go beyond the hour of six o'clock.

That means, in my mind at least, that we should restrict the presentations and any discussion with the groups to 20 minutes each. I know that is not long but I think it is better than having some people go half an hour and other people not getting on at all, and that is what we are faced with. May I strongly urge members of the committee, and I think they are invariably co-operative in this regard, that we restrict presentations to 20 minutes so that everyone can be heard. I seek the co-operation of the people making presentations as well.

Mr. Dietsch: On a point of order, Mr. Chairman: With respect to the third party not having any representatives here, can we either summon one of them to—

Mr. Chairman: The clerk has gone. It is very unusual to start a committee without the three parties here. I think the circumstances are extenuating today, and I do not think they would object if we went ahead and started on the public presentations. The clerk has spoken to the whip's office about getting somebody down here. I think if we leave it, it is not fair to the groups.

Mr. McGuigan: We might get slapped for it but, because of the extenuating circumstances, we will risk it in favour of—

Mr. Chairman: We will risk their wrath.

Mr. Wildman: I appreciate your proposal. On behalf of all members of the committee and of the House, we apologize to the presenters on both sides of the issue, because this really does not make it possible for them to deal adequately with the complexity of the issue.

I also think we should, as a committee, make clear to the presenters that because of the cancellation yesterday and the shortened time today—the

procedure should be clear. We are just holding hearings at this point. The bill is not scheduled for any further action by the committee at this point, so the committee will have to determine at a later date how it wishes to proceed with this piece of legislation, whether it will have further hearings or whether it will move to clause-by-clause at some point. At this point we do not know.

Mr. Chairman: Okay. Can we move on then with the presentations? The first presentation is from the Canadian Council on Animal Care, and that is the white package with the blue lettering that is in your folders. Harry Rowsell is here. I hope I am pronouncing that correctly. Would you take a seat? We appreciate your attendance here.

CANADIAN COUNCIL ON ANIMAL CARE

Dr. Rowsell: I would like to emphasize to the committee that the presence of the Canadian Council on Animal Care here today is not at its request, but was requested by some committee member—Mr. Wildman, I understand.

Mr. Wildman: And others.

Dr. Rowsell: We have tried to put together a package for you to give you some background information on the Canadian Council on Animal Care. Basically, we were established in 1968 and have developed guidelines on the care and use of animals in research, teaching and testing. These form the basis of our assessment program, which is conducted at all institutions using animals in research, teaching and testing on a Canada-wide basis. Our objective is a simple one, to work for the improvement in the care and use of animals in research, teaching and testing.

We also have produced a Syllabus of the Basic Principles of Laboratory Animal Science for training people who are using animals in the proper practices and procedure. Of course, a good part of our emphasis is placed on the ethical treatment of animals. We have included a statement on this ethical treatment of animals which, again, has to be complied with by the agencies that we assess. Although it is a voluntary control program, both the Medical Research Council of Canada and the Natural Sciences and Engineering Research Council Canada, which support us, have indicated that they will withdraw their research support to an entire institution or a portion of the institution if it is not in compliance with the requirements of our guidelines.

Our Ethics of Animal Experimentation does state that procedures such as toxicological and biological testing and cancer and infectious disease research may in the past have required continuation until death of the animal. However, in the face of distinct signs that such processes are causing irreversible pain or distress, alternative end points should be sought to satisfy both the requirements of the study and the need of the animal. This is one position that we have strongly taken with regard to the use of the LD₅₀ test and Draize eye-irritancy test.

We have the Department of National Health and Welfare now using dilutions of the material in its eye-irritancy testing and destroying the animal when there are signs of inflammation. There are all kinds of modifications that have been made to the tests, so the classical tests that you see in some of the pictures—and they are horror pictures and I do agree with you that the animals must have suffered a great deal having their eye enucleated and the degree of damage that was done. It has changed so that anything that is known to be caustic is not put in the eye and anything that

is known to be acidic is not put in the eye. There are great modifications that have occurred.

The classical LD₅₀ test is rarely if ever used. Certainly, in the material that I have handed out to you, the Organization of Economic Co-operation and Development has made a statement that is being followed by the health protection branch in its requirements. The OECD has reduced the oral limit test dose in rodents and that material is there for you to read, to see the changes that have been made.

Our position is one where we believe very much in replacement, reduction and refinement, the 3Rs, of the use of animals. We have closely worked with Henry Spira who started this whole discussion some 12 years ago with the coalition against the Draize test and the coalition against the LD₅₀.

Also, we have worked very closely with the fund for the replacement of animals in medical experimentation, working first with Mrs. Hegarty who organized that particular group, later with Dr. Rowan and more recently with Dr. Michael Balls. It is the same thing with the Johns Hopkins Center for Alternatives to Animal Testing. We have worked very closely with that organization.

I would like to draw your attention to one of the initiatives that has been taken by the industry, a statement by John M. Frazier who is the associate director of the Johns Hopkins Center for Alternatives to Animal Testing. He states:

"On Wednesday, September 14, 1988, representatives of government, industry, academia and the general public gathered to participate in the Joint Government-Industry Workshop on Progress Towards Nonanimal Alternatives to the Draize Test. The objective of the workshop was to provide a forum for interested parties to present data and discuss policy regarding the development and validation of alternatives to in vivo ocular irritation testing procedures. Several important areas of consensus were developed."

This is, as far as our council is concerned, the important area. We would like to see the Draize test not being carried out, nor a single LD₅₀ test being carried out. We do know that as far as the regulators are concerned, those that review various protocols on substances that are used in the workplace or in homes or in cosmetics do require that a protocol be submitted that does indicate what kind of an examination has been made to prove that the products are safe and efficacious.

The test is still with us, but it has been significantly modified. There are some 11 alternatives that are presently being addressed as far as the Draize test is concerned and these attempts at validation are going on. Unfortunately, the validation is not going as quickly as we had hoped it would go, because of some of the labs. But this statement by Frazier does present some of the complexities that I think this committee should recognize in dealing with this very complex area.

The large soap and detergent manufacturers and the cosmetics industry are all working together. Henry Spira said: "If I want help, I'm not going to an animal welfare group to get help. I'm going to the scientific community to get help, because it is the scientists who are developing these tests," and that is the position we put forward. Let's get on with validating the alternatives. That is the most important step we can take and we can eliminate the animal from the laboratory.

We share the same position as our animal welfare friends. We would like to see the day when we do not have to use any animals in research, teaching and testing. We are having some progress in that, but we are not there by a long shot at the present time.

As John Frazier says in a document, Validation: Weighing the Draize Alternatives, we are facing a dilemma: "I think it will be possible to eliminate the use of animals in eye-irritancy testing, but that's a hypothesis. Now it must be tested." It is tested through validation. He talks about the Ames test, which is a bacterial culture to identify certain cancer-producing agents. It took 15 years to get its acceptance, so there is a time involvement.

I would like to end on that note, that there is a great deal the industry is doing out there to make the changes. They themselves would like to be able to say, "We do not need to do any more Draize testing, because we've got replacements, we've got alternatives." The LD₅₀ has changed tremendously in the past 10 years.

Mr. Chairman: Thank you very much. I appreciate the fact that you have left time for an exchange with members of the committee. I am sure there will be some questions.

Mr. McGuigan: I think most members of the committee would agree that we would like to see far fewer animals used for this purpose. My question is: Would it not be true that in finding an alternative—perhaps fish is not a good example, because there are people who would say that you should not use fish—from time to time you would still have to come back to the biological test and use it on an animal to see whether your results were holding up, changes that there might be in testing procedures and whatever?

1650

Dr. Rowsell: Yes, this is certainly the case. What is happening today is that many of the pharmaceutical houses are using these alternative tests to screen various drugs and compounds and using chemical examination as well. But eventually, when that product becomes available to the public and is going to come as an item either in the workplace or in the home, when the alternatives have not been validated but have been used in the screening process, then there will be demand for all of the biological systems to be in operation. So it has to go to the whole animal.

Mr. Chairman: In the interest of time—

Mr. Wildman: I would just like to read three short quotes to Dr. Rowsell and ask him what his reaction is.

"The miscellaneous drug advisory bureau and the medical drug advisory bureau"—again, I emphasize that this bill is specifically drafted to try to avoid touching medical research, but since you refer to regulatory bodies, that is why I am referring to them—"will not specifically ask for the Draize or LD₅₀. They will not take the responsibility for ordering such tests, but will leave the decision to the manufacturers....

"The Pharmaceutical Manufacturers Association of Canada has spoken out publicly against the need for these tests. There is enough information available on irritancy and toxicity of compounds that the necessity of the Draize and LD₅₀ testing is truly questionable....

"Manufacturers will run excessive and unnecessary tests on live animals even beyond what the government demands as part of promotional gimmickry and a part of advertising."

Do you agree with those comments?

Dr. Rowsell: Certainly the statement is as you say: The position of the Pharmaceutical Manufacturers Association of Canada is one that is saying that we do not need the LD₅₀ test. I am not sure of their position on the Draize test. The Canadian Toxicological Association, in a document that is in your paper, has also said the same thing about the LD₅₀. But remember, the regulators who review protocols for submission of products that are going to be sold in the marketplace do require certain documentation as to safety. They do not say how they have to be tested; they say that you have to prove to us that they are safe.

Of course this is the dilemma that we find ourselves in. The manufacturers say that the only tests that are available are these classical ones that are out there. We will have to use them, because we do not have another. I do agree that there is some testing that is unnecessary in order to advertise your products as safe and efficacious. This is not deregulatory. This is the free enterprise system saying, "I want to sell my particular product."

Mr. Wildman: Those quotes that I read are indeed from you, yourself, sir.

Mr. Chairman: Are there any other comments or questions of Dr. Rowsell? If not, thank you very much for your presentation. We appreciate the fact that you were here.

Mrs. Stoner: My point has been covered.

Mr. Chairman: The next presentation is from Partners in Research, Ron Calhoun. That is exhibit 016.

Mr. Calhoun: At the outset, may I inquire whether it would be approved to share this time with Dr. Bessie Borwein, who was to have been a presenter yesterday as well?

Mr. Chairman: Okay. Please do. Perhaps she could come up to the table with you. This exhibit is 001 in the members' kits.

PARTNERS IN RESEARCH

Mr. Calhoun: Partners in Research is pleased to respond to your invitation to speak to Bill 190 this afternoon. At the outset, may I state that Partners is comprised of a group of concerned pro-science citizens whose mandate is to educate and re-educate the general public, especially young people, about the tremendous benefits to the human condition, both in lives saved and the improvements to the quality of life accruing from biomedical research, and to emphasize the essential role of responsible animal experimentation in this process.

With that statement in focus, why then address issues tied to this bill before the House? We believe—and we are prepared to support that belief—that the real issue before you is not a question of vanity and product safety, but the hidden agenda is to open up the attack on biomedical research through the legislative route.

Mr. Wildman: On a point of order: I am the sponsor of the bill and I assure the presenter that I have no hidden agenda. I think it is unfortunate that he would cast aspersions on my motives.

Mr. Chairman: I think we should let Mr. Calhoun make his presentation and then there will be an opportunity for an exchange following that.

Mr. Calhoun: As pure as the intent of the bill is, one cannot dismiss the role of the Toronto Humane Society in this drama, and whatever means it will employ to make gains in its goals. It is a well-documented fact that the the THS is at present in the control of an animal rights organization. The takeover has been a media event for some time.

It is important here that we trace a mindset leading us here today. Ingrid Newkirk, director of People for the Ethical Treatment of Animals and frequent spokesperson for the Animal Liberation Front said: "Animal liberationists do not separate out the human animal, so there is no rational basis for saying that a human being has special rights. A rat is a pig is a dog is a boy. They're all mammals." That is quoted in the Toronto Star of December 28, 1986.

Peter Singer, who wrote the antivivisectionist animal rights bible, says in an article in the New York Review of Books, "...an experiment cannot be justifiable unless the experiment is so important that the use of a retarded human being would also be judged justifiable."

Finally, Victoria Miller, immediate past president of the Toronto Humane Society and founder and national co-ordinator of ARK II activist group, in the Activist, volume one, 1985, page 3 says: "We are justifiably proud of ALF's actions....No, animal activists have not 'gone too far.' We are just beginning to realize that we...animal protectionists all, have not gone far enough."

Other shockers include an article she wrote in the ARK II newsletter, "We began the New Year"—that is, 1985—"by sponsoring a highly controversial conference for the underground Animal Liberation Front following their rescue mission at the University of Western Ontario." Perhaps the most revealing was in the Animals Agenda, January 1986. I quote Vicki: "I believe that this decade will see the first acts of true violence. Some may be accidental—like a bystander killed in a bomb blast; some will be deliberate—like a vivisector shot in the street. The violence will confuse and divide us, but it will be a temporary adjustment and then we will learn to live with it as has every social movement before us."

This is the same organization that has found a legislative vessel to undertake its prime agenda, as written in the Toronto Humane Society newsletter of November 1988. I quote from that newsletter: "Our long-term goal is to eliminate the use of animals, not only in cosmetics and product testing, but in education and, eventually, biomedical research also."

Bill 190 is not an act in isolation. It is very similar to other pieces of legislation in the United States. The Toronto Humane Society, when rationalizing its agenda, sees Bill 190 as lending symbolic support and setting a legal precedent for animal protectionist groups in the US working similar legislation. In short, it has not worked in the US, so Canada is fair game, "We will go north to take over the south." The THS also admits that Canadian testing facilities are not engaged in inordinate amounts of testing for cosmetic purposes. This position is also found in its newsletter of

November. It is all quite transparent.

Also, today I would like to leave you with this handout from the National Association for Biomedical Research in Washington, reflecting the legislative onslaught in the US by the animal rights groups. It may serve as notice here in Canada of what will be coming down the tube with the final thrust to choke off animal-based biomedical research. I would like now to turn it over to Dr. Borwein, and then we will answer questions jointly.

1700

Dr. Borwein: I do appreciate the opportunity to come here. I guess I am the only person here representing the health sciences research community in this province. I do so not only as associate dean of research for the University of Western Ontario but also as a member of the Council of Ontario Faculties of Medicine research committee and a member of the Ontario Universities Council on Health Research.

I am not here to extol or condemn, to defend or encourage any particular method of testing consumer products, including cosmetics, but I want to deal with the medical aspects of consumer and product testing, the consequences.

We have to remember that our society in general, and I think properly, demands very high standards of workplace, consumer and environmental protection. In the health care area, we are immensely concerned about the promotion of wellbeing and disease prevention. I want to address things that appear in the bill and things that I have read in the Hansard report on the debate that occurred.

The debate, by some speakers, presented the use of cosmetics as only a matter of vanity, and by implication, to be deplored and dismissed as something unnecessary. But people have painted themselves, men and women alike, from time immemorial, not infrequently with toxic substances.

The Ontario Science Centre in Toronto recently had an exhibition of Elizabethan women, with their white pallor, receding hairlines, absent eyebrows. Their standard of beauty was the result of poisoning by the lead and mercuric compounds they used as cosmetics. To this day, black women in South Africa have disfigured faces from a cosmetic they concoct which they think will make them white. It leaves their faces with large, permanent grey blotches and it is also carcinogenic. The ancient Romans—I mean, everybody has painted himself with good things and bad.

There are blurred areas where cosmetics and medications overlap. If a person with the scars of a severe burn or other injuries or disfiguring birthmarks paints himself to function well psychologically, is that vanity or is that therapeutic? Sunnybrook Medical Centre in Toronto has a special cosmetic clinic where those unfortunate enough to need it are taught by experts to minimize their disfiguring marks by cosmetics. A friend of mine had a very rare Merkel's cell cancer removed from her face with plastic surgery. She was trained on how to paint herself with cosmetics so she could return to her professional life.

I can go on. Old people suffer a great deal from itchy and dry skin. They need the constant application of emollient creams. Barrier creams are very important in industry, gardening, our homes. Sunscreen lotions to blot out harmful ultraviolet light: We have not taken enough cognizance of the harm of ultraviolet light in our passion for sunbathing. These things are all

really protective and in which we have a great deal of interest.

We also know that everybody, or most people, feels better when he thinks he looks nice and when other people thinks he looks nice. That is why people decorated themselves, decorate themselves now and always will. We take proper self-care as a sign of healthy mental adjustment.

I think perhaps when you have had a chance, all of you, to think this through in all its complexity, you will not, any of you, want to put out the message, as could be inferred from some of the statements by some of the speakers reported in Hansard, that those who use cosmetics are vain and cruel. It would, of course, be untrue and it would also be gratuitously insulting to people of Ontario, particularly women, who are the biggest but by no means the sole users. They have been dismissed as unnecessary and due only to vanity.

Toiletries include soaps, aftershave lotions, shampoos, hair conditioners, toothpaste, denture cleaners, mouthwashes, deodorants and perfumes. They are much improved today from what they were long ago. In every other sphere of our activity, we expect product improvement. I expect we are going to expect this here. We want better creams, better lotions, better emollients, and new products are sometimes very necessary to replace the old. Thank goodness, we no longer use sperm oil from whales in cosmetics. We treat whales as an endangered species. New ingredients were found to replace that, and that is very proper.

We use cosmetics very intimately, such as toiletries. We put them on our skins, in our hair, around our eyes, on our lips and in our mouths. We swallow our lipstick. Everything we put on our hands gets in our eyes, and children swallow products, especially children under the age of five.

The poison control centre in Toronto—Dr. McGuigan told me he would have liked to have been present here. He could not make it, but he wrote that the numbers, which I have appended to my brief, of the thousands of children who have to be treated in these poison control centres represent only a very small number, because it is not obligatory to report poisoning. It is a voluntary compilation of figures. There is a tremendous underestimate of the incidence of poisoning.

"In the treatment of poisoning"—I will repeat again, the great majority are children under five—"optimal therapy is based on toxicity information from a given product. If little or only in vitro information"—that means in glass or in test-tubes; nonanimal testing—"is available, treatment decisions become very difficult."

I will not bother you with all the figures, because there is not much time. One of the prime things children swallow is aftershave lotion and cologne, but they eat cosmetics, and most of this takes place in our bedrooms. There is not time to go into the cases. I have also appended the British figures, which are even higher and more alarming; and they may be better compiled than ours.

Up to now, testing has been important to make products safe. Most of our cosmetics are really quite safe when used as intended, but aftershave lotion or cologne swallowed by children can be very dangerous. There is a lot of alcohol in them and so on.

Products do not need to be tested over and over again. If they are once shown to be safe, the manufacturer just has to have that documentation

available. We are not retesting things that are shown to be safe, and there is in fact no need for that.

Because things are natural does not make them safe. There are awesome toxins in natural products. Just to say that because we are using banana paste or something—and that probably is safe—because it comes from a natural thing does not mean you can do away with testing.

In passing, I want to draw your attention to the Rockefeller University and Johns Hopkins University, funded largely by the cosmetic industry and a few other major corporations, which are devoting themselves to finding better tests.

As a medical person, I acknowledge the tests we use at present are far from perfect from any and every point of view, but they are the best we have had for some time. There is a tremendous drive on to look for better ones, from every standpoint: better medically, more reliable, using fewer animals, cheaper; the whole panoply of what makes a test good.

In the opinion of many specialists, while such tests will refine the process and reduce the number of animals used and speed the process and use them better and become cheaper, it may in fact never be possible to entirely replace living animals. All kinds of prescreening tests are available, but in the final analysis, no cell culture method, no tissue culture method at present can replace what goes on in the enormous complexity of cascades of integrated chemical processes that happen in a living body. It has been said that it is easier to put a man on the moon than to unravel the complexity of a single animal cell.

Cell and tissue cultures do not get diarrhoea, they do not suffer heart failure, they do not suffer kidney failure and so on. There is a limit to what you can extrapolate, although they may well develop—and I think they are—extremely good tests that could do a lot of prescreening and minimize a lot of the other necessary tests, and this is the way things are going.

The problem with this particular bill to us is, first, apart from the other issues, to the classical LD₅₀ test, which is not much used, it adds "and similar tests." All the antennae went up at "and similar tests," because what does that mean when it is undefined?

Also, the references to nonmedical experimentation we found a problem, because there is a medical spinoff from things which seem not to be, on the face of it, medical.

Incidentally, just in passing, the tests that were introduced long ago and which are not practised now were very valuable at the time. The LD₅₀ test was introduced by a British mathematician, because he dealt with the problems around probabilities, extrapolations and interpretation of test results, a very complicated field. They were useful and important at the time. I am very glad, because of the work of scientists, that these tests have been modified and there are new ones all along the way. The modifications do make a big change.

I think the total elimination of animals in tests will take a very long time, and that is also the opinion of a very large number of people. I think some of the material that has been put out in support of this bill is not accurate, and I have appended a letter from Dr. Flowers saying that at least the information should be correct.

The bill impinges on many other ministries—Labour, Health, consumer protection and environmental protection—so it is very complicated and should be gone into with a good deal more detail. What we are concerned about is to avoid any policies that are built on inadequate information, misrepresentations or oversimplifications as to the complexities of the situations that exist. We all have great expectations and desires, but very often they outdistance the actual performance possibilities.

I do not have time to go on with all the other things I would like to talk to you about, but I would like to say that this is complex and the bill, as I see it, is not concerned anywhere in it to minimize pain and suffering of animals, to improve their conditions or to reduce the numbers used. The animals used, mainly rats and mice, are purpose-bred so there can be no fear of extinction of species.

1710

The bill asks for a total prohibition immediately on the use of animals, no matter how few are used, how well they are cared for. It is not seeking for better tests or more science or better education or a reduction of the animal use. It is a blanket prohibition on the use of animals in testing.

Now, those who have pressed for the introduction of this bill to parliament on their own account or through somebody else or others outside the House who campaigned for it in highly coloured language have their own agenda. It is almost certainly not the same agenda as the many people who have supported this bill in parliament for honourable reasons, who are concerned for the plight of animals and who may well have been misled into believing that they had adequate information and that they were in fact protecting animals from being used for a flippant and unworthy purpose.

The director of the Johns Hopkins University Centre for the Alternatives to Animal Testing, which is one of the major bodies hunting for better tests, has written to the New York Times the following: "Society demands that industry use the best tests available, and some of the best tests still require animals. We are moving as quickly as possible. It will take several years to implement methods under development. Premature abandonment of animal testing will pose a risk to human health that the government, industry and the public would find unacceptable."

I would like to submit to you that our agenda, all of us together, is to make for the people of Ontario the safest possible environment, workplace and home. To ensure this, at the moment we do require a regrettable use and unavoidable necessity of the use of some animals. I think the big divide in our society is between a small group who would like to ban all use of animals, no matter for what purposes, and the great majority, who want to see the wise use of animals. I am afraid at the moment I think that until the validations have all been performed and we have really had time to proceed with this, we will need the use of some animals.

I would like to end on that note. I would like you to consider when you are thinking about this, that the whole matter is a complicated one and that it has for us medical implications about which we are concerned.

Mr. Chairman: Thank you, Dr. Borwein. We have had indications from three members. We will split that up in the five minutes remaining, Mrs. Marland first.

Mrs. Marland: Are you saying we have five minutes each?

Mr. Chairman: No, sorry. I wish we did.

Mrs. Marland: This is very difficult—

Mr. Chairman: I agree.

Mrs. Marland: —to sit here and listen to these presentations. To me, as someone who did speak in Hansard and who does wear lipstick, I have to tell you that I am very upset. I really thought that probably you were going to come, Dr. Borwein, and tell us something that we did not know, because I respect very much your own academic position and background. What you extracted out of Hansard was certainly not what I contributed to Hansard.

Dr. Borwein: I was not mentioning you. I am not referring to you.

Mrs. Marland: No, but I do not remember anybody saying that—

Dr. Borwein: There are many references there to the vanity and unnecessary—it was repeated in a few places.

Mrs. Marland: That was not the thrust of the bill. I supported the bill because I felt that the bill was very just. I think what I really want to ask you is, you said there is a lot of pretesting that has already been done. You said, more or less in different words, that cosmetic testing has already been done elsewhere, as has some other testing. You go very heavily, as did Mr. Calhoun—so I guess I am asking you both this question.

To me, frankly, you seem very embittered against somebody else's agenda. You talk about the mover of the motion having a hidden agenda. You said that what we might not see is the hidden agenda behind the people who want this bill. I have to ask you, is there something wrong with other people having an opinion that is different from yours that is another agenda? When you say there is another agenda that we are not aware of, what is their own agenda, these other people whom you feel that you have to oppose?

Dr. Borwein: There are, of course, in society a lot of varied gradations of views on many topics. There is now—all of us must be aware of it because it has been in the news a great deal—a lobby, groups or coalitions that have developed, of people who believe we are not, as human beings, entitled in any way to use animals for our own advantage. That has clearly been in the air a great deal and we all know about that.

In the way things have developed in the onslaught that has been made, I think it has been found in all the polls and everything else that most people want medical research and that a very large proportion of people do not mind animals being used in medical research. Everybody has to learn this. Those who are most assiduous in wanting to move everything towards a society in which there would be no use of animals have mandated four or five other areas that they can go after much more successfully, moving into the soft underbelly. It started with the seal trade and it has moved into the fur thing and the cosmetic business. There are a number of these things that have gone into it.

Now, you asked me what the other agenda is. I am trying to answer that for you.

Mr. Chairman: I wonder if we can come back to you, if there is time,
Mrs. Marland.

Mrs. Marland: Because of the time I have to be very brief, but I have to tell you that in supporting the bill and speaking on my own behalf—I do not speak for everybody, even in my own caucus, because this was a free issue in terms of our caucus. As I said in the Legislature, as the mother of a child who died of leukaemia, nobody understands better than I the importance of medical research. I do not support the eventual elimination of animals for all kinds of testings, because I know that is not realistic. I supported this bill very sincerely because I think it is important and does have a tremendous amount of merit.

Dr. Borwein: I am sure you did. I would never doubt that.

Mrs. Marland: I think what we have to look at is what the bill says and not engender what may follow or what it really means or what is really behind it. I am accepting the bill on its face value. The question that keeps coming to my mind is, why does a dog have to be made to swallow septic tank cleaner to measure the amount of toxicity? We know it is toxic. We know what it will do to children if they swallow these household products, so I do not understand why there is so much concern about eliminating that kind of testing when the knowledge is there.

Mr. Chairman: Can we move on now to Mr. Wildman who has a question?

Dr. Borwein: Can I just briefly answer that? I want to say that I do not—

Mr. Wildman: Unfortunately, there are others to present, Mr. Chairman.

Mr. Chairman: That is what I am saying.

Dr. Borwein: The testing changes are coming from science and they are coming from industry; they are not coming from legislation.

Mr. Wildman: I apologize again to the witnesses for the shortened period of time and I will be brief. I appreciate the comments made by my colleague since she is looking at the bill and the principle of the bill, rather than at what might happen later.

I would like to present to the witnesses some statements made by Robert A. Armstrong, MD, assistant director, bureau of nonprescription drugs, Health and Welfare Canada. I am sure the two individuals are familiar with Dr. Armstrong. The source of this is Reducing Animal Use in Toxicity Testing in Canada and Internationally, part of a symposium held in Ottawa, May 12, 1987.

He said, "We"—that is Health and Welfare Canada—"resist all efforts to make us tell them"—the industry—"they must kill their animals or blind them." He also says: "Since cosmetics should include only those substances which are relatively nontoxic, the LD₅₀ test should have little applicability with regard to cosmetics. Since cosmetics are not intended to be ingested, it seems pointless to force-feed animals to a point where 50 per cent of the test group dies from the toxic properties of the ingested substance."

He also says: "In the case of cosmetics, most of the ingredients have been extensively used in personal care products by a large percentage of the population over many years. Consequently, in most cases the degree of hazard should be known."

Surely that would indicate that the LD⁵⁰ test has little applicability and that therefore its banning in the testing of cosmetics should not be a problem, and that most cosmetics in use now do not require further testing. I wonder what your concern is in regard to cosmetics and household products.

Dr. Borwein: The majority of cosmetics we use are safe because they have been tested. In Ontario, I think we have very little of that happening which you have described. We know there are two or three institutions that do this. So we are not dealing with a problem, as I have discussed with you privately, Mr. Wildman. That is not a big problem in your constituency. It is not a big problem in Ontario as a whole.

The point I am making is nobody wants to see animals used in that way. We all would like to have better tests, but the way the better tests are coming are not from legislation; they are coming out of science and they are coming out of the community which now has to make the tests. That is the point I am trying to make.

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Mr. Wildman: But you do not disagree with Dr. Armstrong.

Dr. Borwein: I do on many other things, but it would take too long to discuss it now.

Mr. Dietsch: I will forgo my question in deference to letting some of the other presenters get on the record.

Mr. Chairman: I appreciate that because it does mean cutting into other people's times. I should point out, just before we do that, that this tape has been left by Mr. Calhoun for members of the committee. If they wish to view it at any time, it will be in the clerk's office. It is called A Question of Safety: The Importance of Product Safety Testing. It runs 14 minutes and 30 seconds. We will leave that in the clerk's office.

Mr. McGuigan: I have a short question I would like to get on the record.

Mr. Chairman: Is it very short? Does it require an answer? All right. You are cutting into other people's time.

Mr. McGuigan: I would like to ask the presenters, do you not think that in your presentation you would have been better advised to have focused in on the bill? The one thing that bothers me is household products. You think of the things in household products, Lysol for instance, I have a neighbour whose child's voice was very badly damaged by Lysol.

There are the insecticides and the rodenticides and a whole list of things we use for controlling fleas and cockroaches and all of those items. Those things are in the house, readily available to children. As parents, any parent would want to know the strength of that material and at what strength it is going to threaten the children. My question is, do you not think it would be better to focus in on the things in the bill?

Dr. Borwein: It would be, but I was trying to provide a general background. You are absolutely right. My own son, age two, ate boot polish. The problem with the poison control centres is not the fact that lipstick is safe when the product is used as intended, but that it is also used as not

intended, which is the point you make. There is also accidental use and deliberate abuse, about which we have to know.

Mr. Chairman: Let's move on.

Mr. Wildman: On a point of order, Mr. Chairman.

Mr. Chairman: A point of order from Mr. Wildman. Thank you very much for your presentation.

Mr. Wildman: I would like to suggest that we change the order of the last two since I think they take a similar position from different standpoints on the principle of the bill. Dr. Barnard has a long way to travel and has a plane reservation. I wonder if it would be acceptable to change the order of the two presentations.

Mr. Chairman: Is that all right, members of the committee? Dr. Barnard, is that all right? Thank you, Mr. Wildman, for your suggestion. Dr. Barnard, welcome to the committee. I understand you have come some distance and have a plane to catch.

Dr. Barnard: Thank you for your consideration. I certainly do appreciate that. I have several materials I have brought that specifically address the issues not of medical research, not of all sorts of broad issues that were brought up, but specifically the content of this bill, which is what I assumed your--

Mr. Wildman: Excuse me, Dr. Barnard, for the benefit of the committee, could you introduce yourself?

PHYSICIANS COMMITTEE FOR RESPONSIBLE MEDICINE

Dr. Barnard: My name is Neal Barnard, MD. I am with the Physicians Committee for Responsible Medicine. We are an international group of physicians and others who are concerned about a variety of issues in medicine. We specifically address the issue of animal testing and the inappropriate use of animals. We have addressed this issue in a variety of areas.

It is our clear and unequivocal judgement that the Draize test, the LD₅₀ test, many similar animal tests and all tests used for household products and cosmetics are medically unnecessary, and at worst, dangerous and misleading.

I would like to enter into the materials you have available a videotape that I will make available for you at the end. I would also call your attention to a newsletter that specifically addresses this issue and provides some technical material on alternatives that are in common use now.

Before I deliver some prepared comments, though, let me answer a couple of the points that came up in the previous questioning. First of all, let me say that what I am about to say comes not only from my own opinion as a practising physician, but also from the many ophthalmologists who belong to our organization and who see eye injuries. They have told me what they need in order to understand the treatment of eye diseases and how to safeguard the household, so that if a child gets something in his eye we know if it is irritating and how we decide our treatment.

I mention that this bill would not restrict the validation of

alternative tests. The point came up that we need to do Draize in order to validate other methods. In my reading of the bill, exceptions of that type would be possible if deemed so in the regulations pursuant to the bill.

The point comes up: Is this not just one step in another hidden agenda? I guess I have two reactions to that. First, I feel I am standing by seeing someone being insulted. The comment to me sounds as if you legislators just do not know that the wool is being pulled over your eyes, that you are going to be passing regulations like dominoes without looking at them. I point out to those raising this that in my experience those who are elected to public office and to modify public law do so with a great deal of consideration. They pass laws when they believe it is a good idea to do so and they do not when they believe it is not in the public interest. I hate to hear people charged with modifying public law accused of being fall guys for anyone's agenda.

Having said that, obviously the opposition to this bill has a variety of agendas. The agenda I hear loud and clear is an opposition to any regulation of any animal use. As a physician, I am well aware that the history of research has been full of abuses, not only of animals but of humans. Regulation is what we need. People calling themselves doctors and researchers stray all the time and we have a long march of regulation ahead of us.

I hope it would be on anyone's agenda to get rid of the Draize test. It is a stupid test. It has been around for half a century and it is long overdue to get rid of it. If we wanted to go across town, if we picked a car we had kept around since the 1930s, it might get us there but it probably would not get us there as well as the latest model. The Draize test, like this old car, is a of a pre-Second World War vintage that doctors do not take seriously. Like this conveyance I was mentioning earlier by analogy, all too often it does not do the job.

I certainly agree with the previous speaker that we need safe products. That is one of the best reasons to get rid of the Draize test, because it misses, the LD₅₀ misses, all too often.

It is well known that the Draize test is cruel to animals. I do not think anyone would dispute that. It is cruel to children too. It is cruel to our spouses who may get something in their eyes, because all too often it is used as a rubber stamp.

Take Clairol products, for example. You can buy Loving Care hair colour. You would assume that this has been tested and you would assume it must be safe if it is on the drugstore shelf. Did you know that if you get Loving Care in your eyes, you can be blinded? The manufacturer knows that. That is why he prints it right on there. It says: "This will cause blindness if you get it in your eyes." Did we need to do a Draize test to do that? If so, the Draize test does not work very well, because products that can cause blinding in rabbits or humans are marketed anyway.

One might say we need animal tests not to keep things off the market but so that we can label them properly. I do not think so. We label all medications with the following text, "Keep this and all medications out of the reach of children." We do not say, "Well, I'll do an animal test and if it passes the test, then leave the label off." We put that label everywhere because sometimes the animal tests do not predict properly. The same must apply for cosmetics and household products. We must ensure that they are not only safe but also that they are kept out of the reach of children. We should not allow a Draize test to have that label erased. That is what they would

have you believe.

It is not just the Loving Care I mentioned. The reason we got this data is that Clairol was required by the United States federal government to release its testing results. We found that many of their products are called "eye irritants." They can cause blindness or permanent eye damage, yet they are released for your use. The Draize test, then, is not even used as a safety test. There are those who would say, "Let's save children." Fine. Of course we must do that. That is why I am a doctor. The Draize test does not do that.

One might say that maybe the Draize is the best we have. Far from it. Before I describe the alternatives, let me mention some specific faults with the Draize test itself. It was invented by John H. Draize who is still alive and living in Bethesda, Maryland. Back in the 1930s, he developed this test for the Food and Drug Administration in the United States. He took rabbits, pulled out their lower eyelids, put something in there, closed them up and put the rabbits in a stock, and at one, two or three days, and sometimes later, checked to see what happened to those eyes.

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In 1948, the Draize test was already well standardized, but in that year researchers found that a concentrated solution of histamine phosphate caused just a slight and transient reaction in the rabbit, but even very dilute solutions of the same substance—200 times more dilute—caused severe damage to humans. That was one of the first shots against the Draize test. It had missed something very dangerous for people but safe in rabbits.

And 0.5 per cent selenium sulfide caused no reaction in the Draize test, but in humans it causes inflammation of the eye and irritation. There are many other substances. Cresol does not cause much rabbit eye reaction, but it does in humans. Even ozone, which has been tested because so many joggers in Los Angeles are running through it, is nonirritating to the rabbit eye, but even at very low levels can be irritating to humans.

One might say, "I guess that makes sense because a rabbit eye is not the same as a human eye." The reason they use rabbits is not because a rabbit is like a human. The reasons rabbits are used are because they are docile, they cannot hurt you very much and they have big eyes. That is hardly science. That has to do with animal husbandry.

The pH of human tears is 7.1 to 7.3; the pH of rabbit tears is 8.2. That is a one-point difference on a pH scale. Every one-point difference is a 10-fold difference in acidity. The tears are different. The cornea of a rabbit is 30 per cent thinner than that of a human. The rabbit has a third eyelid that can sequester compounds and pull them away from the eye, so that you get a false reading. Rabbits blink at different rates than humans do. They tear at different rates. Our ophthalmologists have said that if you want to do a test, the rabbit eye is one of the worst, and yet this is the animal for which the Draize test was standardized.

Moreover, even if one were to proceed and say, "I know it is a bad test; I am going to use it anyway," studies have shown—Carnegie-Mellon University probably did the best with this. Carnegie-Mellon University said, "How are people doing the Draize test?" It published its results.

Let me quote from it, "Certain laboratories consistently recorded unusually severe scores...for the materials tested....Other laboratories

reported consistently nonirritating scores." Same test, same compounds, but the different labs came up with different interpretations. Why? Because it is a very subjective test. So a technician might say, "This looks safe to me." Another technician might say: "No, that is dangerous. You cannot release that for human use." We are relying on what is essentially a very subjective test. If we care about the safety of our families, we obviously have to do better than that.

The people from Carnegie-Mellon went on to say: "It is suggested that the rabbit eye and skin procedures currently recommended by federal agencies for use in the delineation of irritancy of materials should not be recommended as standard procedures."

What are the alternatives? There are many, but let me preface this by saying that this bill is a very intelligently written bill. It talks not about drugs and not about medication; it talks just about cosmetics and household products. There is one alternative that all companies should use. This is the alternative that was used by Nexus, by Paul Mitchell, by Elizabeth Taylor's new perfume, by Cher's new perfume, by Benetton; they all use this alternative.

It is not a fancy test. It is to pick things, knowing that it is a cosmetic, knowing that it is a household product, knowing that kids eat things, knowing that people splash things in their eyes. They make their products safe. They make them from ingredients that have a long history of use. Some of them may have been animal-tested in the past. Some of them may not. But what they have said is, "If I am going to put a new ingredient in there and the only thing that is going to tell me if that is safe or not is an animal test, then I am taking a chance with lots of kids."

So responsible manufacturers are relying on what I call intelligent formulation. One could say: "I want a better face cream. I want a nicer toothpaste." I do not want that if it means some of my patients have children who eat these things and the only data I have are from an animal test. This is the best alternative: intelligent formulation.

For those who would like more scientific-sounding things, there are many. Dr. Joseph Leighton at the Medical College of Pennsylvania has developed the CAM or chorioallantoic membrane test. He takes a chicken egg, puts in a needle and draws off some fluid. What happens then is that the little membrane that is under the shell collapses into the egg. He then drills a hole into the top of the egg and looks down at that membrane. If you have ever opened an egg, you know there is a little membrane under the shell. That membrane can be made to react very much like the human eye. So he puts the test substance on that membrane, incubates it and reads the reaction.

Why is this better than Draize? The correlations are good. It is better than the Draize because you can run it over and over and over again. It can be much more standardized. It is much easier to standardize eggs than it is rabbits. You do not have the animal husbandry problems. You cannot neglect to feed an egg over the weekend and so forth.

There are many others. As you have probably heard, Noxell, which is the maker of Noxzema and Cover Girl, has a new chemical alternative it is instituting instead of the Draize. They had to break rank with the others with whom they formerly opposed these bills. They finally said, "Okay; we will get rid of the Draize." There are others and I have depicted them for you in the newsletter you have available.

Clonetics Corp. makes cell culture tests. These were developed at Rockefeller University; the technical aspects of them are described on page 3 of the handout. The validation studies are good. People say, "We want more validation studies." There have been numerous validation studies over the past several years. Time has really run out. If we want to have safe products we are just going to have to go in that direction.

Let me just make a couple of comments about the lethal dose 50 per cent test. I am sorry to say that it seems to continue under a variety of names; for example, the lethal dose 40 test or the lethal dose 39 test. What are we talking about? Lethal dose 50 means the dose of a substance that kills half the animals you give it to.

Your product is even cleaner. You force-feed that to dogs. Someone said this is only given to rodents; not true. Although you hate to think of rats or mice being force-fed these things, implicit in LD₅₀ is that it is going to typically three species, one of which by most standard practice must not be a rodent. That means a dog or a cat or a primate, typically multiple species.

They will repeat these tests. What they will do is force-feed the substance to the animals until half of them die. If it is a toxic substance, the animals are pleased with this because they die quickly. If it is not very toxic, the test still does not end until half the animals die. Let's say it is mouthwash. How much mouthwash do you have to force-feed a dog to kill him? Quite a lot. They die of haemorrhage or bloating. This sounds horrifying, but this is absolutely routine when the LD₅₀ is permitted.

What companies are doing is reading the writing on the wall saying these tests are going to be banned, as rightly they should. They move to other tests like the LD₄₀ or the LD₃₅, where 35 per cent of the animals have to die. This is not science. If I am in an emergency room and someone comes in and they have ingested something, I do not care how much it takes to kill that person. I want to know how much it takes for them to have any toxic reaction whatever, because that is what I, as a doctor, must treat.

Again, if we are talking about household products and some company is introducing something that is so dangerous it might kill a child in any concentration, I submit to you that is an irresponsible company. They should not be allowed this rubber stamp of animal tests that allows them to get these things on the market. They must be told: "This rubber stamp will be withheld. You are not allowed to do this. You must formulate them safely."

The salient points I want to make are that these are old tests, they go way, way back and they are not respected by physicians. As I think was understandable, the people opposed to the bill did not really address these tests. This bill does not talk about research. I think you will know bills that deal with research when you see them, if you see them. These tests have failed to protect all those children who were poisoned in Canada in the past several years. If we want to feel good about what we are doing, we have to move away from this.

Let me stop at that point. If there are questions, I would be glad to entertain them.

Mr. Chairman: Thank you, Dr. Barnard. A number of people have indicated an interest in asking questions. We very much appreciate your

presentation and your coming here, not having had much time to prepare. As I say, we do appreciate it.

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Mr. Dietsch: I get caught up in the aspect of some of the things that have already been going on and some of the things we are looking at going on now. I agree with the previous speaker that the legislation before us is indeed very complex and has some far-reaching areas. I am aware, and I am sure you are probably aware, that Ontario is the only province to have an Animals for Research Act, and a very comprehensive one at that.

One of the areas of great concern I would like you to comment on—it might be better commented on by the member who presented the bill, but I would like to hear Dr. Barnard's comments in reference to subsection 16a(5), which deals with the comments with regard to testing for research. It is my interpretation, in recognizing some of the far-reaching applications there, that there might very well be the prohibition of tests, for example, on the levels of pollution through fish, or the toxicity tests with respect to pesticides.

Coming from somewhat of a farm background, I understand the very real significance in terms of concern over what aspects of chemicals are available on a farm lot with relationship to some of the pesticides that are developed for the protection for the fruit crop.

I would like to have your comments with regard to subsection 16a(5) and how we would incorporate or get around the ability for dealing with those items I have outlined. I think also contact lens fluids may not, or as I interpret the act anyway, would not have the ability to be tested under subsection 16a(5). How do you feel about that?

Dr. Barnard: These are really matters that I think must be carefully addressed by those drawing up regulations. My hunch is most people would not consider contact lens fluids to be either cosmetics or household products. There certainly are grey areas, but certain things have a medicinal use and those would have to be addressed. The things you mentioned typically might fall under the category of a drug. That is obviously a matter for careful regulation.

Regarding the pesticide issue, I share your concern with that. That, in my mind, is strictly within the province of medical research, with the idea being to prevent illness. That would be my interpretation, that inquiries in that area may have nothing to do with this bill. I should tell you that no one is going to Draize test a pesticide. It is simply not relevant.

Mr. Dietsch: I recognize that as a fact, but none the less these other items are out there. Where do you go? Do you start listing the items you have one way or the other, "These will not be permitted to be tested on animals"?

You see, that particular clause in my mind deals with a very broad, sweeping approach. When I look at items of a household nature, I look at the items with respect to what happens in the house, when you are dealing with cockroaches, fleas, lice, houseflies and wasps. You know, cockroaches spread bubonic plague. You are dealing with wood products in the house, with termites and powder-post beetles and silverfish.

I have six children and I get very caught up in the aspect of the types of testing that go on. Are you aware how many animals are used in testing in Ontario? Can you tell the committee that?

Mr. Chairman: That is the last response. Then we will go on to the last group.

Mr. Wildman: I do not think the witness could answer that last question. He is not from Ontario.

Mr. Chairman: All right. We will make this the last response.

Dr. Barnard: The only thing I would say is that we are now in coalition with the national network to prevent birth defects and others, in part because we are mutually concerned that animal tests are failing to indicate the dangers from pesticides, roach killers and things of that nature.

There are good alternatives available. They must be used and a bill of this nature would encourage their use. The other part of this is that the animal tests take so long to finish and are difficult to replicate because of the expense. They are very bad and that is the reason we have so many toxic pesticides. Passing this bill would go a long way towards remedying that and making our homes safer.

Mr. Chairman: Dr. Barnard, thank you very much for the presentation. I wish we had more time, because I am sure we could spend a lot of time with you.

Dr. Barnard: Shall I leave this tape with you?

Mr. Chairman: Yes. Thank you.

Mr. Wildman: When and if we ever get to dealing with clause-by-clause, I would hope that we would be introducing amendments to deal with the kinds of concerns you raise.

Mr. Chairman: Our last presentation is from Beauty Without Cruelty. Alann Dixon is here, I believe. The presentation is these two sheets members have in front of them in their kit somewhere. It is 1/07/017.

Alann Dixon, thank you for coming to the committee. We are pleased you are here.

BEAUTY WITHOUT CRUELTY

Ms. Dixon: I am Cali Alann Dixon and I was asked to speak today on behalf of Beauty Without Cruelty. I will mainly refer to it as BWC from now on.

Over the last 20 years, BWC has established itself as a leading name in vegetarian cosmetics and toiletries. It has a philosophy based on the vegetarian ethic where animal byproducts are replaced by only natural, higher-quality ingredients. They make use of these natural substances to ensure safety and to prevent the need for animal testing in the development of or on the finished product. I think the name speaks for itself.

I would like to just give a brief history of how and why I became involved and committed to BWC. After attending university, I went on to attend

an aesthetic school. For those of you who are not familiar, it is where I learned all the proper care for skin.

It was during the final research for my paper and presentation on the beneficial effects and effectiveness of animal byproducts on the human skin—for example, placenta, collagen and elastin, ingredients commonly found in high-priced supercreams. I became aware not only of the negative effects of these animal byproducts on our skin but also of the cruelty that the animals underwent to extract such products and then the subsequent testing that they had to endure to have these products made available to be sold for our use. My school presentation turned out to be a lot more like what I am going to relate to you today.

I was working in other aesthetic salons and finding it extremely difficult to compromise my principles as well as to deceive clients as to the benefits of animal byproducts on their skin. Not long after that, I realized I was very committed to this cause and I invested over \$30,000 in opening my salon, called Beauty and the Beach. It is a totally cruelty-free aesthetic salon. Absolutely everything in my salon, from the products used for the services and treatments as well as the products used in the cleaning of the salon itself, is cruelty-free.

As time went on, someone said to me that I was being too political and too radical. I thought I was just being practical. The client who stated this to me is one of my most loyal clients today, along with many other satisfied customers of BWC.

I think this is because there is very little chance of irritation or adverse reactions in using BWC. There is only total satisfaction, and this is due to the lack of additives, preservatives, chemical fillers and animal byproducts that are invariably found in almost all other cosmetic lines, except for cruelty-free.

BWC is so pure and so natural that you can eat it, and I have an article here that states that it may not taste too good, but it is edible.

Mr. Dietsch: Very nourishing. We're not hungry now, but—

Ms. Dixon: Exactly. It is true. How many of you right now could eat your deodorant or your soap? With BWC, as I said, it is not tasty, but you could. They state that you can. It is made of wheat germ and olive oil and all sorts of things. Anyhow, I will carry on.

Not only have sales of the skin treatments increased dramatically at my salon, Beauty and the Beach, but the product is travelling now to the Fiji Islands with a group of lady ministers who are clients of mine who restock their supply while here in Ontario.

I have also realized since the success of Beauty and the Beach and by carrying the BWC product that there is not an Ontario or Canadian made cosmetic product that I am aware of that is cruelty-free. I have seriously been considering starting up our own product line. I know and believe that based on these facts a made-in-Ontario, cruelty-free product would be very successful and humane.

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I would just like to finish by saying that I think we have to be concerned about all cruelty, because it is a terrible thing. I believe it is the worst human sin. I think we are probably a long way from a world without cruelty, but I think we can all help at least a little bit to make it less cruel. We can all try to put right the things closest to home. I think it was Mahatma Gandhi who said the greatness of a nation and its moral progress can be judged by the way its animals are treated.

Mr. Chairman: Thank you, Ms. Alann Dixon, and for shifting your position in the presentations. That was co-operative of you.

Mr. Wildman: I have one short question. You have heard suggestions made during the debate in the House that cosmetics were related to vanity and thus women were somehow cruel and vain if they used cosmetics. Obviously, you are not opposed to the use of cosmetics. You just want to use ones that are safe and that do not involve animal testing, and there are such products available.

Ms. Dixon: There are. I use them. Being a former model, I used to use certain other products that were animal-tested and I do not think that is necessary to have. Like it says, beauty without cruelty or beauty with concern. You can have it.

Mr. Dietsch: Your products are working very well, too.

Mr. Chairman: It is like that commercial we see on television where the fellow sells hairpieces. He is his own best customer.

Mr. Dietsch: I do not have a question for the presenter, but I do have a comment to make. Maybe the presenter is aware of it or not. Maybe Mr. Wildman can tell me. My understanding is that the manufacturers of cosmetic and household products are required to prove the safety of the product in human use and that the federal government will only accept the testing by animal testing. Is that correct?

Mr. Wildman: No, that is not correct. They do have to prove the toxicity safety, but as I quoted earlier, Robert A. Armstrong, who is the assistant director of the bureau of nonprescription drugs, Health and Welfare Canada, stated in a symposium on this issue on May 12, 1987, "We, Health and Welfare Canada, resist all efforts to make us tell them, the industry, they must kill their animals or blind them."

He specifically states, and I think people who have presented before the committee today would agree, that Health and Welfare Canada—that is the agency responsible for determining whether a product should be on the market—does not specify what kinds of tests are accepted and certainly does not specify animal tests.

Mr. Dietsch: Could we have the benefit of your notes on that?

Mr. Wildman: I think you have them already in a package that was distributed yesterday.

Mr. Dietsch: It is in this pile, is it? Thank you.

Mr. Brown: Just so I am clear on this, because I am a little

confused, does Health and Welfare Canada accept the animal test as being verification that it is?

Mr. Wildman: They do accept it, but they do not require those tests.

Mr. Brown: What other tests, then, do they accept?

Mr. Wildman: It depends on the product. I think the presenter just previous to this one indicated some of the alternative tests that are available, including the use of egg tissue, the use of computer programs and a number of other tests that are considered to be effective on some products. On others, Health and Welfare Canada has not yet accepted that they are proven to be effective. There are a number of different ones.

Mr. Brown: One of the things that is confusing me here is that the previous speaker said it is very expensive to use animals and unreliable, all those things. Yet manufacturers continue to do that. That does not make sense to me.

Mr. Wildman: In fact, the opposite is happening, as was indicated by the previous speaker. Major manufacturers are moving away from these tests. Noxell is just one example of one which most recently has moved away from these tests, has determined that these tests are not necessary and is using other types of tests or using products that do not require testing.

Mr. Brown: Then why is this legislation necessary if the marketplace is going to do that anyway?

Mr. Wildman: I might argue the other side of it, that if the tests are unnecessary but some firms are continuing them, perhaps we should be using legislation to encourage those firms which are continuing them to follow the example of those that have desisted from using them.

Mr. Dietsch: For the record, as well, there is in our packages a letter from Jake Epp, with the second page of the letter giving an explanation of this approach. It indicates that many of the products that are determined to be pain-free are determined that way because of previous tests that have taken place, and perhaps they were tests using animals. Who knows?

Mr. Wildman: That is true, but, as has been indicated by a number of our presenters, since a number of cosmetic products use ingredients which have been tested over the years and their toxicity is known or accepted as safe, it is not necessary to continue those tests.

Mr. Dietsch: True, but I was talking about new product lines. That is where I am caught up in the question.

Mr. Chairman: Ms. Dixon, thank you very much for your presentation. I appreciate the self-discipline shown by the presenters and the restrictions that were placed upon them—I know it was not what it should have been—and for the members of the committee for recognizing that as well. This ends the debate on this bill for the moment. It may or may not come back before the committee, depending on its future scheduling and the wishes of the members of the committee.

On Monday we begin the estimates of the Ministry of Northern Development and Mines in room 151. The reason for that is the need for the bilingual

services and translation for the Minister of Northern Development (Mr. Fontaine), which is a very good thing to do.

Mr. Wildman: I just wanted to express my thanks to the members of the committee for making it possible for us to have these hearings. I regret again that we were not able to have the full two days. I would hope that at some future date the committee will be able to schedule this bill coming back before it for whatever hearings might be necessary and for clause-by-clause debate. I would also like to thank the presenters on both sides of the issue for accommodating us today.

Mr. Dietsch: I think it is important to note that they were here on short notice and I certainly appreciated, from our point, the presenters and their frankness and their time allocation. It should also be noted that if you had not obstructed and rung the bells, they could have been here yesterday as well. We could have heard everybody.

Mr. Chairman: On that note, we are adjourned until Monday afternoon.

The committee adjourned at 5:58 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT
LOI MODIFIANT LA LOI SUR LES ACCIDENTS DU TRAVAIL

MONDAY, FEBRUARY 13, 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitution:

Martel, Shelley (Sudbury East NDP) for Mrs. Grier

Also taking part:

Mackenzie, Bob (Hamilton East NDP)

Clerk: Mellor, Lynn

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses/Témoins:

From the Ministry of Labour:

Sorbara, Hon. Gregory S., Minister of Labour (York Centre L)

Clarke, Richard, Manager, Workers and Conditions of Employment, Policy Branch

Beall, Kathleen, Counsel, Legal Services Branch

Du ministère du Travail:

Sorbara, l'hon. Gregory S., ministre du Travail (York Centre L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, February 13, 1989

The committee met at 3:47 p.m. in room 151.

WORKERS' COMPENSATION AMENDMENT ACT

LOI MODIFIANT LA LOI SUR LES ACCIDENTS DU TRAVAIL

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Etude du projet de loi 162, Loi modifiant la loi sur les accidents du travail.

Mr. Chairman: This is to begin the debate on Bill 162, An Act to amend the Workers' Compensation Act. This week we shall be hearing from the Ministry of Labour and from the office of the employer adviser and the office of the worker adviser. Following this, when the Legislature adjourns, we will be conducting hearings across the province. Until the Legislature adjourns, we shall not be conducting hearings across the province, and that should be clearly understood by those who have an interest in these proceedings.

What we shall do is that if the Legislature continues to sit beyond what most people thought would be the date of adjournment, whatever was scheduled for that week will be temporarily lopped off the committee schedule for hearings. The steering committee of this committee met earlier today and it was agreed that would be the way in which we would proceed. The extended sitting of the Legislature has caused us a lot of scheduling problems, as most members know. We notify people of what we think the schedule will be and then the Legislature continues to sit. I am not editorializing on that, but it does mean we then must reschedule this committee's hearings.

Mr. Black: Mr. Chairman, might I perhaps just make a comment on that?

Mr. Chairman: Yes; go ahead, Mr. Black.

Mr. Black: Those arrangements could be changed if there were agreement among the three House leaders, I assume.

Mr. Chairman: Yes.

Mr. Black: So it could be possible that we might hold some public hearings if the three House leaders were to agree to that.

Mr. Chairman: While the House was in session?

Mr. Black: Yes.

Mr. Chairman: If the committee agreed to it as well. I do not think we would want the House leaders to lay that on us without consultation with the steering committee and the committee as a whole.

Mr. Black: No, but what if that suggestion were to come from the three House leaders?

Mr. Chairman: Yes. Okay?

Mr. Black: Thank you.

Mr. Chairman: There is one slight error. On Wednesday, the committee members' schedule says we will hear from Jason Mandlowitz, director of the office of the worker adviser. That of course should be "employer adviser," not "worker adviser."

Just for members' information, since we started scheduling the hearings on Bill 162 there have been over 600 requests for appearances before the committee. I know a lot of members have had a lot of phone calls, and I assume they have had letters, requesting more time and more opportunity for different groups to present.

We all know the problems with scheduling. What we have tried to do—Lynn Mellor is working extremely hard in this regard—is to schedule the umbrella groups first of all. For example, if there is a union and a labour council and both ask for a hearing in a community, then of course the labour council, as an umbrella group, would get first shot at the time available. We think that is the fairest way.

We have tried to be consistent all across the province on that kind of arrangement, but you should know that there has been an enormous amount of interest in it. I think you all know that because of the time restrictions, we have not been able to go to every community we would like to and we have not been able to schedule everybody we would like to. That is inevitable when you have a bill in which there is so much interest across the province.

Are there any comments from members of the committee before we proceed? If not, we have with us today the Minister of Labour (Mr. Sorbara). Mr. Sorbara, welcome to the hearings. I understand you are going to be spending some time with us.

Hon. Mr. Sorbara: Thank you very much. I want to begin by introducing the people who are here with me at the table. To my left is Richard Clarke, who is the policy adviser within the policy branch of the Ministry of Labour. To my right is Kathleen Beall, who comes from the legal branch of the Ministry of Labour. I also want to begin by acknowledging the presence in the room of my parliamentary assistant, the member for Halton Centre (Mrs. Sullivan), and as well the presence of both the chair of the office of the worker adviser and the chair of the office of the employer adviser, from whom you will be hearing later on in the week.

I want to thank you, Mr. Chairman, and members of the committee for this opportunity to make opening remarks as you begin the process of examining Bill 162, An Act to amend the Workers' Compensation Act. I want to wish you Godspeed in your deliberations as you conduct public hearings around the province and hear from a wide representation of groups from all over the province. I want to congratulate you on organizing public hearings that will touch every corner of this province. I anticipate that you will be hearing a wide variety of opinions and expressions on these amendments.

The deliberations of this committee, together with the public hearings that will take place across the province, represent to all of us an important

part of the legislative process for this bill. I look forward with great interest to the results of the work. I believe the principles on which Bill 162 are based are the right ones to help us bring about a fairer and more effective workers' compensation system in this province. However, I look forward to hearing the views of this committee.

I might interject at this point that I have approximately 15 or 20 minutes of comments to make at the outset of these hearings, after which I am going to ask Dick Clarke to go through the bill in some fine detail. Then I will be open to your questions after that.

The government recognizes that the workers' compensation system is in need of substantial reform. It was created to help injured workers and their families cope with the consequences of workplace illness and injury. But over the decades, inequities have appeared in the system. Individual efforts to address these have in turn created some new problems.

There are many key areas where the system has not been responding as fairly and as effectively as it should to the needs of injured workers. For example, compensation based on the clinical rating system, often referred to as the meat chart, does not fairly reflect the loss in wages due to illness or injury. Existing vocational rehabilitation programs offered by the Workers' Compensation Board have not been effective enough, primarily because they have not been initiated early enough after the injury. Too many injured workers have been left unemployed or underemployed after experiencing an injury.

Bill 162, which I introduced in the Legislature last June, addresses these critical problem areas. In doing so, it will make the workers' compensation system in this province respond more fairly and effectively to the circumstances of injured workers.

There are two main thrusts contained in Bill 162. First, it ensures that injured workers have a fair and genuine opportunity to return to work and start making a living again as soon as they are able. Second, it ensures that workers who have suffered permanent partial disabilities because of a workplace accident or disease are compensated fairly and appropriately.

The bill contains several measures concerning financial compensation and key among them is the institution of a dual-award system for permanent disability. This dual-award system will compensate workers for the economic losses they experience as a result of a workplace injury. And for the first time in the history of Ontario's workers' compensation system, the noneconomic losses associated with permanent injury will be explicitly recognized.

Today, as you know, if a worker is hurt on the job and ultimately suffers a permanent impairment, the decrease in the worker's capacity to function is rated clinically. The level of compensation is calculated purely on the basis of the degree of physical impairment suffered by the worker. The problem is that this clinical rating bears no relationship to the kind of work the worker does.

Under Bill 162, however, workers will be compensated for their loss of earning capacity through regular payments that will be set at 90 per cent of their projected after-tax economic losses. These payments will of course be indexed.

Also, the initial determination of an injured worker's economic loss due to impairment will normally be made within 12 months of the injury, at which

time the Workers' Compensation Board will establish a compensation level. Furthermore, this level will be reviewed twice: first, 24 months after the initial award, and second, 36 months after the first review. This compensation of economic loss will be paid to age 65, when the injured worker starts to receive retirement income. That retirement income will include a retirement pension from the Workers' Compensation Board to compensate for the loss in capacity to save for retirement.

Bill 162 also provides for an increase in the ceiling on financial compensation for injured workers. Under the current act, the covered earnings ceiling, which is the maximum gross earnings upon which benefits are calculated and assessments determined, is \$36,600 per year. This is approximately 145 per cent of the average industrial wage. However, the annual earnings of some 470,000 working people covered by the current legislation are greater than that. Bill 162 will raise the ceiling to 175 per cent of the average industrial wage, which would currently come to approximately \$44,000 per year.

But those measures to compensate for noneconomic loss are meant to address such matters as psychological distress or the loss of capacity for leisure activities. The award for noneconomic loss will vary with the degree of impairment, which will be determined by medical practitioners, and of course the worker's age. The maximum award will be \$65,000 for a worker who is 25 years old or younger and suffers a total impairment. Let me point out that this statutory maximum is the largest of any in Canada.

As I mentioned earlier, the other thrust of Bill 162 is to give injured workers a fair and genuine chance to return to work. This will be achieved in two ways. First, the bill provides for earlier and more effective vocational rehabilitation efforts on behalf of injured workers. Second, it sets out obligations on the part of employers to help injured workers return to work.

In the first instance, the bill obliges the Workers' Compensation Board to make contact with injured workers who have not returned to work within 45 days of filing notice of their accident. This contact is meant to identify the workers' need for vocational rehabilitation services. The WCB is required to provide these services where it is determined that they are appropriate. The board is also obliged to design a vocational rehabilitation program in consultation with the worker and, where possible, the employer and the treating physician.

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In the second instance, once a worker is able to return to work, the bill obliges employers to reinstate the worker either to the position held before the injury or to comparable employment, or if the worker cannot perform the pre-injury work, to the first suitable and available opportunity. This obligation covers injured workers who have had at least one year of continuous service in the jobs they performed prior to their injuries.

The exceptions to this specific obligation to reinstate injured workers will be in the construction industry, where work patterns make it impractical, and in situations where employers regularly employ fewer than 20 workers. We recognize that a requirement to ensure opportunities for re-employment would be impractical for small employers.

Let me add that under the bill, an employer's failure to meet the obligation may result in financial penalties equal to 90 per cent of the

injured worker's net earnings for a year. I also want to point out that under Bill 162, the indexed lifetime pensions currently being paid to permanent disability pensioners currently in the system will be fully protected, of course. What is more, the bill provides for supplements to be paid to those pensioners whose compensation falls significantly short of their actual loss of earning power.

These, then, are the main thrusts of Bill 162—fair financial compensation through a new dual-award system, and rehabilitation and reintegration into the workforce.

I have said on many occasions that the reforms of Bill 162 will be cost neutral. By this I mean that if we introduce these changes today for future claims, there is no reason they would lead to either overall cost increases or decreases. But, of course, cost neutrality is not what these initiatives are about. What they are about is making the workers' compensation system operate better both to deliver fair compensation to injured workers and to give them effective help in returning to work. That this major reform can take place within a basically cost-neutral framework bears witness to the potential that exists for significant redirection of the board's resources to achieve greater fairness and effectiveness.

The other point I want to make about the cost neutrality concept as applied to these initiatives is that it is unrelated to the existing obligations of the board to current pensioners. As I have indicated earlier, existing pensions will be fully protected while the bill also makes provisions for supplements to be paid to many of these pension recipients. As committee members know, when we tabled Bill 162 last June, I invited comments from all interested parties. We have received many submissions, briefs and letters. What is more, during the intervening months, I have met often with injured workers, trade union groups and employer representatives to clarify the content of the bill.

As a result of this, it became apparent that some refinements should be made to Bill 162 if it is to fully achieve our objectives to have a fair and effective compensation system. As a matter of courtesy to interested parties and to this committee, I considered it important to announce our intent to make these refinements before this committee started its process of examination and public hearings. Committee members may recall that I announced these proposed changes in the Legislature on January 19 of this year. I want to outline them briefly once again:

We propose to amend the bill to give injured workers the opportunity to choose a doctor employed by the Workers' Compensation Board or to select one from a roster of doctors external to the board for the purpose of determining the degree of an impairment. This change responds to concerns that have been expressed about the need to ensure an impartial determination of this important matter.

We also propose to enable an injured worker or an employer to appeal to the Workers' Compensation Appeal Tribunal any Workers' Compensation Board decision with respect to noneconomic loss. This change will ensure that WCAT can review all matters concerning the compensation claim, including the degree of impairment.

As well, we will bring forward amendments to the re-employment provisions to require an employer to offer injured workers modified work. This is in keeping with the spirit and intent of the recent changes to the Human

Rights Code, which requires that disabled workers be accommodated in terms of employment, provided this does not place undue hardship on the employer.

Finally, we will bring forward amendments to enable either an injured worker or an employer to appeal a WCB re-employment decision to the WCAT. This change will ensure that all provisions contained in Bill 162 may be referred to WCAT.

Bill 162 adds significant new features to the compensation system and, as we look into the near future, you will appreciate that a considerable effort will be required on the part of the WCB and the ministry, including the office of the worker adviser and the office of the employer adviser, to make sure that employees and employers understand how the new provisions will work. But these reforms will lead to a fairer and more effective system and, in the longer term, this will mean less confrontation and less need for litigation in our workers' compensation system.

I would like to emphasize that Bill 162 is a beginning, not an end, to reform of our system. A future green paper will focus on the nature of further reforms and I have established a labour-management advisory committee, made up of 12 people to advise us and help us develop that agenda.

Je veux souligner maintenant, au début de ces audiences publiques, que, dans le projet de loi 162, nous présentons des réformes très importantes pour créer un système plus équitable pour les employés et même pour le patronat; un système qui peut faciliter le retour au travail du travailleur accidenté. Nous proposons un régime de compensation double pour les travailleurs atteints d'invalidité permanente. Nous proposons aussi un système qui peut vraiment faire quelque chose pour le travailleur qui veut, mais qui ne peut pas aujourd'hui, trouver les moyens de rentrer à son milieu de travail.

Je souhaite que vous serez tous présents à ces audiences publiques. J'espère, à la fin, que vous serez d'accord avec nous que ce que nous proposons, dans le projet de loi 162, ce sont vraiment des réformes pour nous donner un système plus raisonnable, plus équitable pour tout le monde et pour la province.

If I may, I would like to complete my remarks with two or three personal observations. I believe strongly that, under this bill, we are creating a fairer system. I believe that we are beginning the process of reorienting the work that the board does in a direction that will truly give workers in this province who suffer an accident or a workplace injury, better, more deliberate justice.

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We are beginning a process of reshaping the focus of the board in the initiatives that we are taking to help workers get back to work more quickly. We are, for the first time, putting a statutory obligation upon the board in the area of vocational rehabilitation. We are, for the first time in this province, putting a statutory obligation on employers to rehire and reintegrate injured workers into the workplace. I point out that we are only the second province in Canada to do so.

I strongly believe that these two initiatives, along with the collateral initiative of requiring employers to maintain employee benefits during a period of a year after the accident, will bring in the fullness of time an important new dynamic to the work the board does. We are also putting into

place a very different system of compensating those workers who, as a result of a workplace injury or illness, will carry with them for the rest of their lives a permanent disability.

In all the discussions I have had on this bill and in all of the meetings I have been at that have taken place on this bill, I have ultimately had to ask myself this question, would I as a working person prefer the system that we have now in this province or would I prefer that which this government is proposing under Bill 162?

If I am a construction worker in Toronto, do I want the certainty of a 10 per cent pension for the rest of my life or do I want a system that responds more uniquely to the realities of my life and my injury and will compensate me accordingly?

If I am a logger in northern Ontario, do I want a system that is haphazard with vocational rehabilitation or do I want a system that has a statutory mandate to look to my specific needs when it comes to getting back to work?

If I am a miner in Sudbury, do I want a system that will assess my injuries and my reduction in earning capacity based on the nature and the extent of my injury or do I want a system that will compensate me based on the realities of what I am earning and what prospect I have to earn after I have recovered from my injury?

In every case, as I have heard the arguments pro and con over and over again, I have come, I confess to you, to the personal conclusion that we desperately need this system in Ontario. But I want to tell you it would be capricious in the extreme if government decisions were made on the personal preferences of ministers. There is very sound authority for implementing the dual-award system proposed in this bill at this time in this province, authority that goes back many years in terms of analytical studies in Ontario. We have been going around this question for almost 10 years.

But the authority goes even beyond our own provincial borders. Saskatchewan implemented a dual-award system some 10 years ago. It is not in its design as generous as the Ontario proposal contained in Bill 162, but I think the 10 years of experience in Saskatchewan are authority and support for what we are proposing. No one in Saskatchewan seriously calls for a return in that province to the system that we have in Ontario now.

Similarly, all of the evidence in Quebec is support for the authority that Ontario's proposals in Bill 162 will be fairer for the workplace parties. That applies to the experience in New Brunswick and Newfoundland as well. Indeed, in Manitoba the government has just recently received a study on these issues, contributed to by all interests and all perspectives, with a strong call for a dual-award system of the kind now proposed under Bill 162.

This system, if it works effectively, will be one that is reasonable as well in financial terms. We do have in this system an unfunded liability of some \$6.7 billion. Bill 162 is not designed to reduce or increase that.

I believe that employers and workers alike will achieve and grow in confidence in the workers' compensation system once Bill 162 is implemented, because it will change substantially the dynamic within the system. The arbitrary decisions that have been foisted upon workers because of the rules that exist in the current bill will, I believe, change.

Far more money will be spent on vocational rehabilitation. Far more money will be in the hands of injured workers who do not return to work. Those injured workers who now ask themselves and you as MPPs how we as a government should expect that they live on a pension of seven, eight or 10 per cent when they are unable to work as a result of their injury, will in the fullness of time, I believe, say the government should have implemented this system many years ago.

I commend you to your deliberations. You have a very challenging agenda. I hope that the deliberations of the House leaders accommodate you and the members of the committee, so that you can get on with your work. I thank you for the opportunity of making opening comments. I would now like to turn the microphone over to Dick Clarke, who will go step by step through the bill.

Mr. Clarke: Because of the difficulty of seeing the slides in this room, given the lights, I have provided the clerk with hard copies of the slide presentation which will be a little easier to look at as I go through it.

Bill 162, as the minister has just said, really contains two essential components. First is the workplace reintegration provisions of the bill which provide, first of all, for the right to vocational rehabilitation; second, place an obligation on employers to re-employ injured workers, and third, provide for maintenance of certain employment benefits during a worker's absence from work because of the injury.

The second element is the dual award, which provides compensation for noneconomic loss, compensation for wage loss, provision for retirement income subsequent to that and provision for an adjustment in the wage ceiling provided under the act.

If I can deal with the dual award first, the first component of the dual award is the noneconomic award. As the minister said, it will be based upon the degree of permanent impairment and the age of the worker at the time of the injury. The intent is to provide lifetime, lifelong compensation to the worker for the impact that injury has on that worker away from the workplace; in other words, in terms of his normal, daily life.

The initial determination, as provided for in the bill, provides that the initial determination will be by a WCB-appointed physician or, as the minister indicated in the amendments he announced a few weeks ago, a physician who can be selected by the worker from the roster of physicians already provided for in the bill. This determination is to be made after a point of maximum medical recovery has been reached.

With regard to awards in excess of \$10,000, it will be up to the workers how they take those awards. They can either take them in a lump sum or have them paid out on a monthly basis for the rest of their lives. For the awards that are \$10,000 or less, the award as proposed in the bill would be paid out in a single lump sum. Following the initial determination of the degree of impairment and the Workers' Compensation Board's determination of the compensation that will flow from that, the worker and the employer will have 90 days to appeal that initial determination.

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In that case, the first stage of appeal will be to a medical practitioner from a roster of independent medical practitioners who will be appointed by the Lieutenant Governor in Council. The worker and the employer will have the first opportunity to agree upon a single medical practitioner from a shorter list provided by the Workers' Compensation Board. If they are unable to come to an agreement, then it will be up to the Workers' Compensation Board to select one from the roster to actually perform the second determination of the degree of impairment.

Where, as a result of that second look by an independent medical practitioner, the board reconsiders the award, it may issue the same award or it may issue a different award depending on the situation that comes from that. That would normally be the final decision on that. However, there are two provisions.

First, according to the bill, when determining that degree of impairment, the medical practitioner is not to look just at the degree of impairment as the situation exists at that particular moment, but is to anticipate the future consequences that are going to flow from that impairment. Is that impairment going to get progressively worse over the life of the worker or not? If so, he is to take that into account when determining what that degree of impairment will be because the lifetime award is going to be based upon that.

However, if down the road the injured worker comes to the conclusion that the anticipated deterioration has not fully anticipated what his or her actual situation is becoming, the worker has an opportunity to apply to the board for reconsideration of the degree of impairment. The worker will have two opportunities to do that during the course of his or her life, so long as it is at least one year after the last determination.

As the minister indicated in January, while the bill had presumed that this would be the final determination of the degree of impairment, that there would be no further appeal, he has already indicated we will bring forward an amendment to allow that decision or the earlier decision to be appealed to the Workers' Compensation Appeals Tribunal.

In terms of the compensation level, remembering that this is a lifetime award, to take into account the impact this impairment will have on that worker for the rest of his or her life, the age of the worker at the time of the injury is obviously important. The younger the worker is at the time of the accident, the longer the worker will have to live with that impairment.

The bill provides for a schedule of compensation, as the minister said a few moments ago, based on the fact that for an injured worker who is 25 years old or younger at the time of the accident and who is totally disabled, totally impaired as a result of the accident, the maximum would be \$65,000. If the degree of impairment were, for example, 10 per cent degree of impairment and the worker were 25, it would be 10 per cent of \$65,000, or \$6,500.

That maximum level decreases by \$1,000 per year as the age of the worker goes up. It ranges from \$65,000 to a minimum of \$25,000 in terms of the schedule, the degree of impairment constantly being applied against that chart. So that is the noneconomic award. As the minister said, it is a new provision in the compensation system that was not there before.

The economic award is based on a projected wage loss. As the minister said, it is to be 90 per cent of the difference in the net income between what the injured worker was earning before the injury and what his or her earning capacity will be after the injury. The initial determination is to be made within 12 months of the injury although there is provision in the bill, for exceptional circumstances, for that to be delayed a further six months.

This determination is to be reviewed twice by the Workers' Compensation Board, the first time two years after the initial award, and the second and final time five years after the initial determination. They are one, two, three. This means the final determination will be made six years after the injury.

At the time of that final determination, the award determined by the Workers' Compensation Board will then run until the worker reaches the age of 65. One exception is noticed on the slide, where the worker has applied for a reconsideration of his noneconomic award, because in his view his physical condition has deteriorated beyond that anticipated at the original time the noneconomic award was set.

If the board upon review concludes that is indeed the case, then that automatically triggers a review of the worker's wage-loss award with these two review periods as well. At the age of 65, the wage-loss portion of the dual award is replaced with a retirement income, which is provided for, and which I will come to in a moment.

In determining the earning capacity of the injured worker post-injury, the bill sets out a number of things the board must look at: first, what the worker's pre-injury earnings were; second, what the worker's post-injury earnings are. That will normally be the case on which the Workers' Compensation Board's decisions will be made. I remind the committee that 80 per cent of injured workers are back at work within 45 days of an injury.

In addition, the board may in some circumstances, particularly, for example, on the initial setting 12 months after the injury, need to look at other circumstances because the injured worker may at that point in time be on vocational rehabilitation, or may still be recovering medically and not yet be able to return to work, or may only be able to return to work part-time. There can be very different circumstances, depending on the individual worker and his circumstances. The board can also then look at the worker's characteristics such as his age at the time of the injury, his prospects successful medical and vocational rehabilitation, and the availability of suitable employment.

To put that on a time chart, which perhaps makes it a little easier to consider, you can see that you have the actual accident that causes the injury. Usually, within two days that injury claim has been filed with the Workers' Compensation Board. One year from that date, under normal circumstances, the board is to make the initial determination of the earnings-loss portion or the economic award portion of the dual award.

Just skipping over the next bar for a moment, two years after that point, the board reconsiders that initial decision. I should say that the award from the first time until that two years runs unchanged. At the two-year point, the board reconsiders it. It may make exactly the same award; it may make a different one. That will then run for a further three years, at which

point there will be a final review of the wage-loss portion of the award. It will then be fixed and continue on until the worker reaches the age of 65.

The award for noneconomic loss, as I indicated a moment ago, takes place at the point of maximum medical recovery. That could be two months, three weeks or two and a half years after the injury. It will be whenever it occurs. It will not be until it has been agreed that it has been reached.

I should also say that each and every one of these decisions by the Workers' Compensation Board is appealable to the Workers' Compensation Appeals Tribunal. That is the wage-loss portion of the dual award in a nutshell.

There are provisions in the bill that provide for related benefit changes: first of all, the earnings coverage ceiling. As the minister indicated in his remarks, the current ceiling, which is now \$36,600 and is indexed annually, is roughly 145 per cent of the current provincial average industrial wage. The bill proposes to move that ceiling up to 175 per cent of the average industrial wage in two steps. As the bill is written, it provides that the interim step will be \$40,000. Our estimate, using the projected provincial average industrial wage at the end of 1988—the final figures will not be available for some months—is about \$44,000. By the time this bill is passed and becomes law, that number will undoubtedly be higher, probably closer to \$46,000.

The bill also provides for the employer to maintain life, health and pension coverage for a worker for up to one year from the accident while the worker is off work. As you will probably know, the current act provides for certain calculable benefits to be included in determination of wages and salaries that fall under the earnings ceiling, but does not maintain the coverage for the injured worker.

For example, their Ontario health insurance plan protection could end within three months and their life insurance protection could end within three months. What this attempts to do is ensure that benefit protection is extended.

Finally, in this category, the bill provides for a retirement income for the injured worker after the age of 65 based on an amount to be set aside that is equivalent to 10 per cent of the annual wage-loss award the injured worker receives. That is to be put aside in a separate retirement account by the Workers' Compensation Board. At the age of 65, the worker will then have a choice how he would prefer to have that pension paid out to him.

The other provisions of the bill relate to vocational rehabilitation. The bill follows on the Minna-Majesky task force report and sets about placing some obligations on the Workers' Compensation Board.

First of all, section 40 of the Act provides—I appreciate there has been some confusion about this because of the language of the bill—that those people who are receiving temporary benefits are entitled to workers' compensation vocational rehabilitation. When we were drafting the bill, we were told by the legal people who were drafting the bill that "receives" means "is receiving and has received." That was not an attempt to cut off vocational rehabilitation to anyone who was off temporary compensation.

Someone who is receiving or has received temporary compensation as a result of a workplace injury is eligible for vocational rehabilitation. The bill provides for vocational rehabilitation supplementary benefits to wage-loss recipients so long as the vocational rehabilitation program is

commenced within three years of the accident, or where there has been a reconsideration of a noneconomic award, within 12 months of that reconsideration. The supplement would provide up to 90 per cent of their net income.

The bill sets out, as I said a moment ago, some time lines on the board. First of all, it provides that the board shall contact a worker no less than 45 days after the injury to identify any services the worker requires and provide those services where they are needed. As you will appreciate, there will be a number of situations where a worker will not be far enough along, in terms of his medical recovery, to even do an evaluation at that point whether he will require vocational rehabilitation services. On the other hand, 80 per cent of injured workers are already back at work at the 45-day point.

In the former circumstance, where it is too soon to determine and the Workers' Compensation Board is to come back later and determine that, we have put a provision in the bill that says you cannot forget about them. Within six months, if that worker is not back at work or is not already involved in or has not already completed the vocational rehabilitation program, the board is to get back to the worker to offer that worker a formal vocational rehabilitation assessment. Again, if the worker is still medically unable to undergo an assessment at that point, those time frames may be extended to arrange for the assessment.

After the assessment has been undertaken, which may be by the board or by an external agency—the bill provides the flexibility to do either—the WCB is to notify the employer of the assessment results and to provide the worker with a detailed copy of the assessment.

Where, as a result of that assessment, the Workers' Compensation Board determines that a voc rehab program is needed to assist the worker, that program is to be designed in consultation with the worker, and where they are available and willing, the worker's employer and the worker's treating physician.

What the bill then does is set out the kinds of things that can be included in a voc rehab program. They may include things like general skills upgrading, language training, refresher courses, vocational training and employment counselling.

The bill also provides that where it is warranted, in those situations where it is known from the outset or perhaps even partway through when designing the voc rehab program that the injured worker is not going to be able to go back to his pre-injury employer, that he is going to have to change careers, in those kinds of situations there is an obligation on the board to provide up to a year's actual job search assistance in finding different work.

The bill also provides for assistance to the employer to modify the workplace, to modify the job in order to be able to take the injured worker back to his pre-injury employer, if not to his pre-injury employment.

Those provisions with respect to reinstatement and re-employment are a third area of the bill. As the minister indicated, the entitlement to this provision is to have had one year of continuous employment with the employer. There are, as the minister mentioned, two specific exclusions in the bill, one for the construction industry and one for those businesses or organizations

that employ 20 or fewer workers. There is provision in the bill, as you will know, for others to be named by regulation.

The employer obligation is sort of twofold as it is set out in the bill. As the minister indicated in the House, we will be bringing forward an amendment to make it threefold. First, if the worker is able to return to his pre-injury employment, the obligation on the employer is to reinstate the worker in that specific job or a comparable job with comparable pay. It may be that you had 20 people doing essentially the same thing. The object is to get that person back doing that, even if it is not specifically the same job he held before; you may have shuffled the staff around in the meantime.

If the worker is unable to return to his pre-injury job, is unable to do the work that is required, then the bill provides that the employer is to offer the first suitable job—that is, a job the injured worker can do—that becomes available after the injured worker is able to return to work.

As the minister indicated a minute ago, we will bring forward an amendment to specifically put in the bill an obligation on employers to modify the work to accommodate workers without undue hardship. I should say that when we were drafting Bill 162, we of course knew that the human rights provisions were there and that they are pre-eminent and apply in any event, but this will make it specifically clear to everyone.

In terms of job security, the object of the bill is to get the injured worker back to work with his pre-injury employer wherever it is humanly possible to do so. The object is to get the worker back as soon as that worker is able. However, in addition to whatever regular employment conditions would prevail, the bill places a reverse onus on employers. There may very well be a collective agreement that prevails and sets out the injured worker's employment conditions. There are, of course, the common law provisions and there is the notice and those sorts of things that apply under the Employment Standards Act in any event.

It says that if an injured worker is brought back to work and then let go within six months of bringing that worker back, the employer first of all, before he does anything else under any other statute or under any other collective agreement provision, is going to have to show that the worker has not been dismissed in violation of that obligation to re-employ him.

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In terms of the employment obligation, an employer's obligation to re-employ a worker does have a limit on it. The limit is one year after the worker is able to return to work. It has been determined by the Workers' Compensation Board that the injured worker can now return to work. The employer is notified he is to bring the worker back as soon as he can, but if, for example, the worker chooses not to return to work within a year, the employer's obligation does come to an end. The second thing is that the obligation runs two years from the date of the injury, so if the worker is unable to return to work within two years, the obligation to re-employ ends at that point.

The bill speaks to provisions of collective agreements. The intent is that collective agreement provisions will apply as long as they offer re-employment provisions to injured workers that are equal or of greater benefit than those set out in the bill.

The bill, as the minister indicated, also can provide penalty provisions

which enable the board to levy against an employer who is found to be violating these re-employment provisions a penalty equivalent to 90 per cent of the worker's annual pre-injury net income. As the minister has indicated, although the bill did not provide for it, we will bring forward an amendment to allow all final WCB decisions to be appealed to the Workers' Compensation Appeals Tribunal.

The final area of the bill is what we have entitled the transition provisions. That is to provide some special provision for workers who were injured prior to the bill becoming law and who are currently, or will be before the bill comes into effect, receiving a permanent partial disability award.

For those whose loss-of-earning capacity is significantly greater than usual for the nature and degree of the injury, there will be a supplement to recognize the worker's loss-of-earning capacity, a supplement to what they are now receiving as a permanent partial disability up to the relevant maximums which, depending on the time of injury, are either 75 per cent of gross or 90 per cent of net, depending on whether they were injured in 1985 or earlier, but not to exceed the equivalent of the old age security pension, which is currently \$323 a month and which is indexed on a quarterly basis.

This supplement will be reviewed on the same schedule as the wage-loss provisions, so when the worker applies for it upon passage of the bill, it will be initially set and will be reviewed twice and will be payable until the worker is eligible for old age security benefits. In addition to that, there is specific provision in the bill for vocational rehabilitation supplements to occur for the current cohort of injured workers, again up to the relevant maximums. Those are the essential provisions of the bill.

Mr. Chairman: Thank you, Mr. Clarke. Is there anything, Minister, from your group?

Hon. Mr. Sorbara: No, that completes our presentations. I anticipate that there are questions.

Mr. Chairman: I should have introduced Lorraine Luski earlier. Those members of the committee who worked on the Report on Accidents and Fatalities in Ontario Mines will recognize Lorraine and the good work she did in helping us to prepare that report. She is with us for the duration of our deliberations on Bill 162. Welcome, Lorraine.

I have one question. I know others have questions too. Mr. Sorbara, on page 3 of your remarks, you talk about Bill 162 raising "the ceiling to 175 per cent of average industrial wage, which would currently come to approximately \$44,000 per year." Do you know what percentage of workers in the province that covers?

Hon. Mr. Sorbara: I am sorry. Could you repeat your question?

Mr. Chairman: Yes. There are still some workers who earn more than \$44,000. I am wondering if you know what percentage of workers are covered by the \$44,000 ceiling.

Hon. Mr. Sorbara: Our statistics indicate that once the ceiling is raised to 175 per cent of the average industrial wage, that will cover some 96 or 97 per cent of the workforce that is covered by the Workers' Compensation Act.

Mr. McGuigan: I am concerned about the people who have not been on the job for a year. Is none of this available to them? It says, "This obligation covers injured workers who have had at least one year of continuous service in the jobs they performed prior to their injuries."

Hon. Mr. Sorbara: That is the provision for reinstatement, the obligation upon the employer to re-employ. We are identifying members of the workforce who have established a pretty firm employment relationship with the employer in order to identify the constituency of workers that will be covered by this bill. It is difficult to make a cutoff like that. Why a year? Why not two years? As some have suggested, why not three months?

Let me give you the reason we are proposing a year. There are obviously a lot of jobs which are seasonal. If the period were less than a year, say six months, we would have to exclude all those jobs which were seasonal. There are a number of thresholds for probationary employment. It may be three months; it may be six months; it may be a year. When it comes down to it, taking all those things into consideration, our feeling was that if the individual is working for the employer for a year, that represents a pretty solid marriage, and it is those marriages that we do not want to end in the event of a workplace injury.

Remember again that this is going to be Ontario's first experience with reinstatement. We have not had it before through the workers' compensation system. We think that in making that determination we can respond effectively and appropriately and perhaps down the road build on that experience.

Mr. Wiseman: I will probably be jumping all over the place here, but if I could go to page 4 of your remarks, partway down you start talking about the fact that the costs will be neutral. Then you go to the paragraph that says, "The other point I want to make about the cost neutrality concept," and you say, as I understand it, that some injured workers out there now may be covered and get additional pensions under this bill. But you still go on to say that there would not be any extra costs to the employers.

If this is the case, you must be intending to reassess some of those who are presently on pensions and bring them down or something in order not to ask the employers for any more money to shore up the Workers' Compensation Board.

Hon. Mr. Sorbara: It is an interesting point. I think I was probably not as clear as I ought to have been on the question of cost neutrality. When we say cost neutrality, that means in all aspects of the bill. In other words, we are not being cost neutral in respect of those people who are currently receiving pensions.

There are, by the way, some 116,000 people in this province who receive a permanent partial disability pension from the board. Some of them are back at work and earning fully as much as they had earned before the accident. Others are not back at work and living on pensions that do not adequately reflect the impact of the accident on their ability to continue to work and earn and feed their families and all that stuff.

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The bill has a specific provision to re-examine the circumstances of that group of pensioners I just referred to, that is, individuals who are not receiving, by way of their pension and their post-injury employment, anything near what reflects what they were earning before. Those individuals—and the

board estimates there are some 25,000 individuals out there in those circumstances—will be the beneficiaries of a re-examination of their circumstances.

Where it is clear that the current pension has not done the job it was supposed to do, those people will be granted a supplement to their pensions which will go up to maximum relevant levels, as Dick Clarke referred to, or to the maximum of the old age security pension, which in today's dollars is about \$325.

In short, there will be more money paid out to the current cohort, and the estimates are of some \$40 million. But the system is not cost neutral in each of its aspects, so that we are going to lower the pensions of some people to recoup that \$40 million. The dual award system and the provisions relating to rehabilitation and reinstatement, the provisions relating to the existing pensioners and the provisions relating to the raising of this \$40 million are all in there. One of the things that this bill does not do is either expand or contract the resources required to fund it. In short, it is not designed to reduce costs or increase them. It is cost neutral in that respect.

But in each discreet component it is not cost neutral. The board will be paying out substantially more money, once the bill is passed, to the injured workers of today. We are not covered, by the way, and I think you know that, by the new system. It is important to put on the record that the dual award system is the system under which injured workers will be compensated once the act is passed and proclaimed.

Finally, to reiterate in that vein, all of the current permanent partial disability pension recipients, that is, people out there receiving lifetime pensions, are unaffected by the bill, except those who are eligible for and will be paid supplements under it. Existing pensions are not affected in any way. They are maintained and indeed protected.

Mr. Wiseman: I am not sure whether it was the slide presentation that mentioned that an injured worker would be offered either a small pension or \$10,000. It has been my understanding that with a lot of pensions and car injuries and so on, once you take that lump sum of \$10,000 or whatever it is—and I think all of us, as members, have had people come in to see us whose back bothers them and was hurt at a particular time but does not really come back to cause them a lot of trouble beyond the five-year period that you have for the last and final—I believe the word "final" was used many times—the third assessment.

A lot of people I see in my office have injuries that happened 10 or 15 years ago. Now they go to the doctor and try to get an appeal to the Workers' Compensation Board and their doctor says that it has just been the previous injury that has started this, and maybe going back to work at their regular job or whatever has irritated it over a long number of years.

The first thing I would like to know is, when they accept, if they do not take the small pension—I would think that if they take the small pension, then they would have a chance to come back and be reassessed, but that word "final" after five years scared me. The other thing is, what are we going to do, as members, when people come to us whose doctors really do say, and we see the reports, that it has been an injury that happened 10 or 15 years ago and now, if we do hold to five years as final, it may not have shown up?

I myself was in a car accident and the doctors told me, in all good

faith, I am sure, that my leg would be 100 per cent. As I get older, I know I could not do some of things I used to do because of the injury to that leg. At the time, I was young and I believed there would be a full recovery and there was not. I am worried when you say the word "final" there after five years, that the third one at five years is final.

Hon. Mr. Sorbara: It is a very good question, because it illustrates that there is, I think, some benefit to explaining once again that in the dual award system we are talking about, two awards come together to respond to the needs of a worker having had an injury. The first is the award for noneconomic loss, and that is the one I think you are concerned about. The second is for the economic loss or, in simpler terms, the loss that the award or the pension is necessary for for those workers who are earning less as a result of the accident.

Can we deal with the first one for just a second? That award is made at the time when the injured worker has reached what we call maximum medical recovery. It is important to look at the words of the bill to understand how the assessment is done there, because the assessment is to be done based on the injury itself and its anticipated consequences. The system is required to look down the road, to get medical evidence about whether that leg in fact is going to cause more problems and more pain and suffering down the road and is going to deteriorate, if you like. First of all, the system must contemplate that when it makes that award.

You suggested that perhaps it is like the insurance system where, once you take the lump sum, you sign off. I know those documents: "I will never sue again. I will never raise this again. I will never come back. You can be rid of me once I sign this document." That is not the case under this system. The act itself provides that if there is an unanticipated deterioration, that is, something that was not reported on, commented on or taken into consideration when the first assessment was done—

Mr. Wiseman: Could I just get a clarification on that as we go along? I think the gentleman alongside of you mentioned the \$10,000 as being like a lump sum, or whatever you want to call it, rather than a small pension. Are you telling me here that if the worker took that \$10,000 because it was a kind of a minor injury at that time—

Hon. Mr. Sorbara: Remember here we are talking about noneconomic: this is loss of the amenities of life, loss of enjoyment of life.

Mr. Wiseman: Yes, but if it did deteriorate after, and after the five years when you do a reassessment, would you look at that and assess it again?

Hon. Mr. Sorbara: Counsel will correct me if I am wrong, but at any time in the life of the worker, 20 years down the road or three months down the road, when there is a deterioration not contemplated in the initial assessment—in other words, we asked the medical community to realize that injuries of this sort tend to deteriorate and to take that into consideration as much as possible—if there is a further deterioration which has not been contemplated, and again it can be 20 years down the road—

Mr. Wiseman: Would that be the dual award?

Hon. Mr. Sorbara: Oh, no. Here we are always talking about one half of the dual award; that is, loss of enjoyment of life, or noneconomic loss.

When that happens at any time in the life of a worker—significant, unanticipated deterioration—the process starts again. I point out that any determination as to whether or not it is significant and unanticipated is a question that can be appealed within the system of the board.

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Mr. Wiseman: Just so I am clear again on that: What you are saying is that if the back gives me a lot of trouble and I am not able to enjoy some of the better things in life, you will reconsider that. I wondered if it covered both. I understood you said that it did not and that you could go back and get a claim in this dual award system for the injury part of that, for the loss of perhaps being a ball player or enjoying doing things with my children or whatever; I could have that reassessed.

Did you say that you could not go back and get a pension for the pain and the suffering because my back or whatever was worse than anticipated by the doctors when they first examined me? In other words, it had deteriorated more than they anticipated, and they could play God at whatever level, first year, second year or fifth year as to what was going to happen to my body as a result of that?

Hon. Mr. Sorbara: Let me try to answer by way of an example. Let's take an individual who is injured at 35 years of age and has a back injury which causes him a great deal of pain in his back every minute of every day. Let's assume that this person has been working in a job that earns him \$35,000 a year, and as a result of the injury it is unrealistic that that worker is going to return to that job.

When his back is sufficiently healed—he has reached maximum medical recovery—an assessment of that injury will be made. Let's assume that this assessment results in an award to him of \$8,000. This is just an award that deals with the fact that outside of his working life he has to carry that pain with him when he is playing ball with his kids or whatever. Let's say that the award is made six months after the injury. That worker can take that \$8,000 as a lump sum or he can have that \$8,000 paid to him as a pension.

Remember, our guy was making \$35,000 a year. Let's say that at the end of a year that person is back at work in another job that is paying him less. Let's say that he is making \$20,000 a year in a new job. A year after the accident a pension will be paid to that person based on the difference between \$35,000 a year and \$20,000.

Let's assume that this is where he is going to work for the rest of his life. That pension would be paid to him from that point through to age 65. There is a statutory review two years and five years down the road. That is a separate pension all together. It is the difference between \$35,000 and \$20,000, and it is based on 90 per cent of that difference. It is indexed and paid to make up for his income loss, separate and apart from the \$8,000 paid.

Let's assume that 10 years down the road that worker finds that the back injury is affecting his arm so that there is a severe numbness and incapacity in using the arm. Ten years down the road he would go back to the system and say, "The medical report examining me and awarding me the noneconomic loss did not contemplate that I would be restricted in the use of this arm." A re-evaluation would be done, and if it was unanticipated and significant, a further noneconomic loss award would be paid. Who knows what money is going to be worth, but an additional X thousands of dollars would be paid. Again, that could be taken as a lump sum or as a pension.

In addition to that, because that process was undertaken, the worker may well have a re-examination of his income maintenance pension done. If his income is unaffected, if there is no change in his work or his earning ability, then no change would be made; but it could, it should and it will be made if his income is affected as well.

I know that is a longish answer, but I think that—

Mr. Wiseman: I think it covers what I was wondering about, because that word "final" in there after the five years really threw me. I thought he could not go back and have a reassessment. As long as the provision is in there, it does not worry me quite so much.

Hon. Mr. Sorbara: I think we understand the system is not one that has that kind of tort law sign up.

I want to make one correction to the record. If the payment for the noneconomic loss is under \$10,000, then it will be paid in a lump sum. If it is over \$10,000, it can be paid in a lump sum or in a pension, at the option of the claimant.

Mr. Wiseman: Maybe some of the other members have the same problems in their constituency offices. When there is an injury—one of your gentlemen mentioned that about 80 per cent of them were back in 90 days or something like that—a lot of them have a hard time getting on to the pension. I guess the odd time the employer has not sent in the slip or they have not taken the slip to the hospital, the doctor or whatever it is. That and the unemployment payments taking so long to come through is a real hardship to some people, even though they are off for only maybe a month or two.

There was nothing that either of you mentioned of trying to speed up that area. A lot of these people are workers who are on an hourly wage and maybe do not have a bit of money set aside for something like this. I would have thought you might have tried to speed that up or say it must be paid within a reasonable length of time, such as seven days or 10 days after the accident or something like that.

Hon. Mr. Sorbara: I think Mr. Wiseman raises another very important point. I want to preface my comments by reminding members of the committee that the Workers' Compensation Board will be here in the form of its president and senior staff, and you may want to pursue these sorts of questions again with them, but I want to remark briefly on your questions.

It is important, first of all, to remember that the dual award system applies to some 10 per cent or 12 per cent of the board's caseload. There are some 500,000 claims that come before the WCB every year. Seventy-five per cent of them are expeditiously handled and processed, and there is no complaint whatever.

What we are talking about here in this bill, as far as the dual award system is concerned, is, as I said, 12 per cent of those people who have a claim before this board. About 12 per cent suffer an injury or develop an illness that is permanent. I have lost my finger, I have lost the use of my ear, I have hurt my arm in a way that means I will never be able to use it again. It is permanent but partial disability in that someone is not totally impaired in terms of the ability to work. That, as I said, subject to correction by the board on Thursday, is about 12 per cent.

One of the difficulties with the current system, besides being arbitrary in terms of looking to matrix and extent of the injury to determine pension, is the shouting, screaming, fighting and litigious atmosphere that the system, the worker and his or her advocate go through in establishing that pension, because a lot turns on that. If I injure my back and I am not going to work again, I have to fight that system to make sure I get some sort of reasonable pension. Even if it is 15 per cent, if I am not working it is a cruel reality I face as a worker: "They want me to live on 15 per cent of what I used to make before the accident."

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That is part of all the dilemma we have in the current pension system. Of course, it has very significant consequences for the employer as well, because notionally once that pension is fixed at 15 per cent his assessment rates have to reflect the fact that this worker is going to receive 15 per cent of his pre-accident employment from that day for the rest of his or her life, even if he or she lives until 90. That has to be incorporated on how we tax the workplace in order to provide the revenue. So there is a hell of a lot at risk. That is part of the reason why it becomes so contentious.

This new system is not so risky for either side because it says: "If you're not working and you can't work then we can provide you with full compensation, a full pension, and we're going to try and help you to get back to work. And yes, three years after that assessment we'll look at it again. By that time, if you're working your pension will go down."

The employer is happy about that because notionally in paying the rates he is not paying so much. Remember that we established lifetime pensions in this province and in this system when most of us probably were not going to be here by age 65. Many of us were going to die in the workplace. We were going to work ourselves to death. We are getting beyond that now. People are living longer lives, so we have a worker compensation system that is providing fairly substantial retirement income in terms of lifetime pensions and often very inadequate income-replacement income during the working years.

What the dual award system will do is shift a good deal of those resources, put it up front, turn the system into one that pays the most substantial part of its permanent partial disability pensions during the working lives of the people who are injured. In other words, we are going to try to put the worker back in the place that worker would have been had it not been for the injury, both in terms of income support and in terms of helping that worker get back to work.

What was your question?

Mr. Wiseman: I know there are others, but I just wonder if I could ask you one quick question. You mentioned \$6 billion-plus in the fund.

Hon. Mr. Sorbara: There is \$6 billion and more in the unfunded liability.

Mr. Wiseman: Does that go to the Treasurer (Mr. R. F. Nixon)? If so, does he pay the rate of interest on it that he does to borrow money from other sources each year?

Hon. Mr. Sorbara: The accounts of the WCB in terms of its assessment and the use of its funds are completely separate from the consolidated revenue fund.

Mr. Wiseman: Does the WCB invest that in bonds or with a trust company on a yearly basis or a monthly basis to get a high rate of interest?

Hon. Mr. Sorbara: I am sure it does, but more specific questions on that should probably be directed to the president of the board.

I want to clarify one point. I think there may be the misimpression that the Workers' Compensation Board has \$6 billion in money floating around to invest. The \$6 billion and more that I referred to are the liabilities of the system to pay out on pensions of all varieties given the determinations that have been made. An unfunded liability means that the system will be liable in the fullness of time to make those payouts and it has not specifically provided, that is, funded those in the assessment it has made against the employers who have contributed and out of whose workplaces those liabilities have occurred.

Mr. Chairman: As well, the board chairman often brings his actuary along with him when he comes to the committee, and that is always a delightful exchange.

Mr. Tatham: It is a very brief question really. Page 3 of the presentation to the standing committee, this picture story. "Medical practitioner from roster" I understand, but I do not understand "Opportunity for worker and employer to agree on selection." If they have this roster, cannot the worker then just pick somebody off that roster? I do not follow.

Hon. Mr. Sorbara: Perhaps Dick Clarke can refer to the specific provisions in the legislation and expand on them.

Mr. Clarke: When we bring forward the amendments the minister announced the other week, there will be two opportunities when a physician can be drawn from the roster.

As the bill now stands, the provision of a group of independent physicians named in a roster are the initial step in a review of the first determination of the degree of impairment. The notion is that in that kind of situation we would have a group of physicians with particular expertise to deal with particular kinds of impairment situations, and rather than providing the parties with a list of, say, 300 physicians across all sorts of ranges of expertise, the board would draw from that roster a short list of physicians who have a particular expertise to deal with the problem the worker is suffering; that the worker and the employer would be given an opportunity to agree upon which one of those particular expert medical practitioners they would like to review the initial decision.

With the proposal the minister made the other day to amend the bill to allow an injured worker to select a physician from the roster for the initial determination, the scope will be much broader.

Mr. Tatham: In other words, they do not have to agree. Is that it?

Mr. Clarke: No, they do not have to agree. They would not have to agree in that case. For the initial determination, it would be up to the injured worker to select one.

Mr. Tatham: He or she can pick out whomever they so desire?

Mr. Clarke: Exactly.

Hon. Mr. Sorbara: Subject, of course, to medical competence. You cannot pick out a doctor—

Mr. Tatham: If you have the list, though, then the worker can say, "I want A, B, C or D." You do not have to get along with the boss to say, "Let's figure out who we want." He can just pick out who he wants.

Mr. Clarke: Yes, you are right.

Miss Martel: May I ask a supplementary on that, please? What is the difference between a board roster and a list of doctors established by the compensation board whom the worker can see? I know there was a change in terms of whom the worker could see. We have gone through it today and I do not understand what the difference is. They are all board doctors in the end, are they not?

Hon. Mr. Sorbara: No, as a matter of fact they are not all board doctors. You will recall that the Workers' Compensation Appeals Tribunal has a roster as well of doctors qualified and identified as doctors to provide independent medical advice.

There are doctors who are employees, as you know, of the board. The purpose of creating a roster of doctors is to identify independent physicians who agree to work in this context and make these determinations where called upon. The question of whether a doctor is on the roster would be determined by his or her willingness to participate. Remember that a doctor who does WCB work is not working within the Ontario health insurance plan; he is working within another pay system. So it is a willingness to work, competence in the particular area and availability.

There are not an awful lot of doctors, at least from our initial discussions with the Ontario Medical Association, who are ready, anxious and willing and jumping at the opportunity to get on this roster. One has to understand occupational medicine, for example, workplace injuries and that You have to identify doctors who are willing to do that. That is why we are talking about a roster. A doctor would also have to understand the rating system that the board ultimately adopts and that is ultimately approved by regulation. Competence in understanding that would be a qualifier as well.

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Miss Martel: Who invites the doctors in the first place to get their names on the roster?

Hon. Mr. Sorbara: I think the board would, just like the tribunal did, but that is not exclusive. We have to put it together and I am not sure exactly how that will come about, but I want to try to assure you these are not Workers' Compensation Board doctors, employees by another name.

Miss Martel: That is what I am concerned about.

Hon. Mr. Sorbara: I do not see how it could be. The doctor would be an independent practitioner with a vibrant, lively practice in the community. It may well be there will be individuals who submit the names of doctors to be included in that roster. The question then would be, is the doctor willing, competent and available to perform that sort of work?

My own suspicion is that the roster will begin small, because our

initial contacts with the Ontario Medical Association have not identified a whole bunch of practitioners who are anxious to be on it. I think that within a few years, as names are submitted and the system develops, the roster will grow substantially, both in terms of numbers and in terms of the geography; that is, there will be a number of doctors available, willing and participating in all parts of the province.

Mr. Mackenzie: A supplementary on the same question: I take it then that if, for example, the Ontario Federation of Labour, which worked with you on a number of other issues, were to submit a list of doctors for listing on the roster, they would be accepted as readily as anybody else's by the board.

Hon. Mr. Sorbara: I think so, subject to all of the qualifiers I mentioned: competence, availability and understanding of the system.

Mr. Wiseman: Can I ask a supplementary on that? It is just a short one. You said it would be small at first. A lot of our people feel intimidated with the doctors around here if they come to Toronto, but they would go to Ottawa. Would you see their being able to go to Ottawa? Perhaps from the chairman's area, they would sooner have a doctor in Sudbury than come to Toronto.

Hon. Mr. Sorbara: I always feel a warm reception whenever I go to the chairman's area in Sudbury.

Mr. Black: It's called a hot reception.

Hon. Mr. Sorbara: Sometimes that too.

Mr. Wiseman: When they are called in to a doctor in Toronto, they do not feel comfortable.

Hon. Mr. Sorbara: There is no doubt about it. Let's make sure we understand that the board itself is going through a very substantial reorganization, with regional offices and the establishment of ISUs, or integrated service units. There is a real convulsion. Not all of it has been easy. There have been difficulties and there have been mess-ups here and there, but by and large, for such a large organization to go through that reorganization, I think it has been pretty successful.

The same dynamic is driving issues relating to both medical and vocational rehabilitation. To the extent that the service, whatever it is, can be delivered closer to home, in many cases the service will be more effective.

Now, when you are talking about roster doctors, you have to be able to find the competence, the willingness and the commitment in community after community. One would suspect that because the largest number of doctors are in the greater Toronto area, a majority would be from the greater Toronto area when the roster is first set up.

There is one more point that I think is even more important, although this is not unimportant, in terms of this determination of awards and compensation for noneconomic loss. There was some concern, and I think we listened to it within the ministry and the government, about the initial provisions in the bill. What we have done now is to provide two starting gates and two levels of appeal for the determination, depending on what starting gate you are taking.

You can start off with a board doctor. Believe me, in the vast majority of cases, people will start off with a board doctor. In the vast majority of cases, just as in every aspect of the board's work, the resolution will be satisfactory. But if there is concern, then the bill provides that you do not have to start off there. You can start off with a doctor who is independent of the board's paycheque. He practises independently—identified on a roster, yes, but practising independently.

Mr. Mackenzie: But can you really argue that is a heck of a lot different?

Hon. Mr. Sorbara: I would argue that initially you might not think it is going to be independent, but the experience at the Workers' Compensation Appeals Tribunal is that it is. Those doctors who are on the tribunal's roster are not in the pockets of anybody. I do not think any doctor is in the pocket of anybody. I think the roster will develop a character of its own.

Mr. Mackenzie: How about family doctors, then?

Hon. Mr. Sorbara: If family doctors are competent and willing to participate. But in the statute we are not putting on the roster whatever doctor is identified by the claimant as the family doctor. We are not doing that and I acknowledge that. But I think we are making an important step to give people the sense that the doctor doing the initial evaluation is independent of the payroll of the board.

More important is the fact that if you are dissatisfied with that determination, the matter can be taken to the WCAT. Indeed—correct me if I am wrong on this, counsel and policy adviser—if you start off with the board doctor and you are dissatisfied, then you would go to the roster doctor. If you are dissatisfied, you would go to the appeals tribunal. So in that case, with that starting gate, there are three reviews of the matter.

I hope it is not going to be necessary, but there will probably be one or two cases that take that route. Again, at the appeals tribunal, there is yet another roster of doctors the appeals tribunal can call on for an assessment that is independent of the perspective of the employer, of the worker and of the board. It may not be everything you want, but I think we have covered some bases here.

Miss Martel: I have some questions about doctors, but I will get back to them at another time. I do have some questions about vocational rehabilitation. I want to start off by asking the simple question why it is not going to be an obligation of the board to provide vocational rehabilitation services.

I say that in light of the massive report done by Majesky and Minna which pointed out all the horror stories going on at the board now. It pointed out in particular that only one in six workers who needed vocational rehab ever received it because the board, if it did not have to offer rehab, would not. Why, in view of all that, would this government not put an onus on the board in terms of an obligation to provide rehabilitation?

Hon. Mr. Sorbara: I think we are probably disagreeing on what the impact of the statute will be. I think the obligation on the board, in practical terms, will be to provide that sort of rehabilitation. I am confirmed in my view when I hear, told to me from the board, how much more it

is going to be spending on vocational rehabilitation as a result of these provisions.

I do acknowledge that the explicit de jure statutory obligation is to provide a vocational rehabilitation assessment within the time frames set out in the statute and thereafter to provide the services identified by the assessment. I agree there is a measure of discretion there. I think that measure of discretion is needed where an assessment is just fully and completely off the mark. But there again, given the statutory obligations to do those things, the worker will be in a far better position than he or she is in now, because the nature of that assessment and whether it is not as appropriate is subject to review at all the levels of review within the board, including the WCAT.

I think there will be one or two leading cases at the WCAT to clarify that language. But what we have right now is a board that has no statutory obligation at all to provide vocational rehabilitation. They have complete discretion whether or not to do it. Once you incorporate in the statute an obligation to provide that assessment, you put in place a process that is inevitably going to lead to far more vocational rehabilitation being done because it is going to be required by the system. It is going to be demanded by the system because of the rights that surround all of that process.

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When the board tells me there are going to be millions and millions of more dollars spent on vocational rehabilitation, I take it at its word. They tell me they are making budgetary provisions for that now. So I think we disagree about the meaning of the statutory language. Frankly, we do not disagree substantially on the eventual outcome in real terms in vocational rehabilitation being done in particular cases where historically everyone acknowledges it has not been done.

Just one more point on that if I can: This is not just plucked out of some other universe and overlaid on Ontario society. We are in the midst of some very substantial changes in thinking and social engineering in terms of the way in which we respond to people with disabilities. I just think it is part and parcel of that. It is timely and appropriate to put the responsibility to provide that service in the statute. It is consistent with all of the other things we are doing as a society with respect to people who are born with or suffer from disabilities.

The final point is that no matter what you put in the statute, there will be cases you lose in the sense that vocational rehabilitation is in some respects the most challenging work the board or any organization like it does, because for some the injury is a shattering of self-image, of status within the community and of personal sense of worth. When you try to rehabilitate in terms of a workplace, you have to acknowledge you may be looking at someone who is going through a massive trauma, far more significant than what would be expected by virtue of just that injury, objectively analysed.

You know the cases and we all know the cases. Some of them are just really difficult even if you said in the statute, "You have to fix John Doe's life by law." You would not be able to do it and I think we all know that.

Miss Martel: If I can continue, I guess I do not take the board's word as the minister might, because there are too many people in my office who at the discretion of the board have been cut off rehabilitation or never

offered rehab in the first place. Just because the board has indicated it is putting more money into vocational rehab does not necessarily mean the board is going to spend the money and actually provide the service.

Let's go back to the point you raised that the only obligation on the board is to provide a vocational reassessment, and that does not in any way, shape or form lead naturally to it providing rehabilitation services.

Hon. Mr. Sorbara: These are services that assessment calls for.

Miss Martel: But that is the only thing that is the responsibility of the board, to provide the assessment. I am saying I do not think that will lead in any way, shape or form to the offering of services. You have said you think it will.

Hon. Mr. Sorbara: Yes, I do.

Miss Martel: Then if that is the end result, why will you not then put the language into the bill to ensure that happens?

Hon. Mr. Sorbara: I guess I am satisfied that the language is there. May I just quote from section 19 of the bill which creates subsection 54a(2) of the amended act? "Where, in the opinion of the board, a worker should be provided with a vocational rehabilitation program, the board, in consultation with the worker and, where possible, the employer and the worker's physician, shall design and provide the worker with a vocational rehabilitation program."

I can appreciate that the words "in the opinion of the board" are offensive to Miss Martel, but I want to suggest that when a section like that is considered by the WCAT, given the current jurisprudence and the way in which the WCAT considers these matters, all signs indicate that those programs will be provided. If they are not, if they are arbitrarily and capriciously denied, we will see a case very soon in the WCAT requiring that they be delivered.

We have just seen a WCAT case where the language of the statute on interest was absolutely silent. The WCAT, having examined the system and its place in our society, has said there is a statutory obligation on the board to pay interest, and now we have a policy.

Miss Martel: What about the chronic pain cases where the WCAT did decide in the favour of the workers and now the board of directors is staying those for an indefinite period of time?

Hon. Mr. Sorbara: I would love to have a long discussion on that, but I am not sure it would be appropriate.

Miss Martel: No, I am just using your philosophy. You were saying if indeed at the operating level and all the way through, we are not happy with the fact that the board has capriciously and arbitrarily not allowed for rehabilitation, we then have the option of taking our people to the WCAT and at the WCAT level it will probably be overturned, as in the case of the interest payments, and actually offered.

I think it is ridiculous that we have to go through all that. I appreciate that the WCAT is there. I do not think that is the way to put in good policy or legislation. Second, there is no guarantee that the board of directors is going to abide by that anyway.

Hon. Mr. Sorbara: Well, that is an interesting view on it. In responding to the language of this statute, which does allow a degree of discretion to remain within the board which I think is necessary, the board will interpret its obligations on the basis of what the Workers' Compensation Appeals Tribunal would say in a particular case. I do not think, with respect, it is similar to the chronic pain cases and the section 86n review.

The reason why I do not is this: Based on the need for a determination—not on chronic pain, which was accepted, but on retroactivity in chronic pain, how far back you would go to compensate on chronic pain cases—the corporate board, after a very thorough analysis of the issue, came up with a policy. They articulated a comprehensive policy on chronic pain, which they have not only the right but the obligation to do.

A number of cases came through the WCAT on the very same issue of chronic pain and retroactivity. As a result of those cases at the tribunal, a different determination, an entirely different policy on chronic pain and retroactivity on chronic pain was enunciated by the tribunal. The corporate board, faced with its own policy done on its own analysis and the tribunal's policy, said, "We have to resolve these two disparate views of the law." And that is what is going on now.

I would suggest to you that a comprehensive policy on vocational rehabilitation would be exactly what we will be getting from the board. It will be far more thorough and responsive and it will be based on their statutory obligations to intervene early and to respond substantially to the needs of workers. We have that mechanism there in the WCAT to ensure that is the case. The board cannot arbitrarily deny vocational rehabilitation under this system based on this statutory language and the right of appeals that exists in the system.

Miss Martel: We are going to have to agree to disagree, because I do not think that that is right. They have every opportunity; they do not have to offer a thing. That is the problem.

But let me look at the limits that are now placed on vocational rehabilitation under this section. Mr. Clarke, you raised the point on page 9 of your submission that the eligibility is extended to anyone who has been on temporary compensation. You noted that there was some confusion around second reading on this question, and it seemed to be that the confusion was arising from the question of whether you could get rehab if you were on temporary benefits, yes or no.

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I do not think that was the confusion. The confusion was around the limit that is implicit if you look at subsection 54a(1) where it says, "This section," that is, the offering of vocational rehabilitation, "applies in respect of a worker who receives benefits under section 40."

What we raised during the debate on second reading was the fact that section 40 benefits under section 45 of this act only go to a maximum of 18 months and then a worker is supposed to be deemed or is supposed to receive either the noneconomic loss or the future loss of earning. Taken logically, then, it seems to us that if you are only on section 40 for 18 months, you can only get rehab for 18 months.

Hon. Mr. Sorbara: Why do we not have Kathleen Beall, legal counsel, answer that question?

Ms. Beall: When you have it in the statute written "a worker who receives benefits," the "receives" means both present receiving or past has received. So once people have received benefits under section 40, the time they are receiving and any time subsequent to that, they would be eligible under subsection 54a(1) to be considered as to whether it is appropriate to receive the vocational rehabilitation benefits. The "receives" does not limit it only to the time you are receiving the section 40 benefits. Any person who is going to receive benefits starts off with temporary benefits before it is determined that he is going to go on to permanent benefits.

So what it does is that once people have been assessed that they are going to receive their temporary benefits under section 40, that kicks in their eligibility under subsection 54a(1). When they cease receiving their temporary benefits under section 40, the eligibility under subsection 54a(1) does not necessarily cease; it continues on. So it is not just read in the present tense; it reads in the present and past tense. Otherwise, it would say "a worker who is receiving benefits." That is how you would word it to have it be just when you are receiving the benefits.

Miss Martel: I think there is going to have to be a clarification of the wording on that. That has been brought to me a couple of times, because it seems that the limit is the 18 months. There is a problem in terms of the present board policy as of January 1. The limit is definitely 18 months at this point.

Hon. Mr. Sorbara: I think if we need to clarify the statutory language to reflect the intent of the government in respect of that, we could have it. We have a lot of work to do here and that is one of our easier tasks, to tell you the truth.

Miss Martel: Can I ask how that is going to impact upon the board policy that was announced on January 1, 1981, wherein rehabilitation is tied to pension supplements and the pension supplements only last 18 months?

Hon. Mr. Sorbara: I think probably that question would more appropriately be directed and asked of the board when it is here. I do not set board policy. This act is clearly intended to provide a vocational rehabilitation period over a period substantially longer than 12 months or 18 months. I cannot answer for board policy. I am responsible for the board's statute. Perhaps we just might want to stand down your question until Thursday then.

Mr. Black: I think I understand but I want to be sure that I have this clear in my mind. On page 4 of your remarks, first, could I ask this question? How many people do we have in the province who are currently receiving a permanent disability pension?

Hon. Mr. Sorbara: The statistics provided to us by the board are that some 116,000 people received PPD or permanent partial disability pensions.

Mr. Black: If I understood your comments a few minutes ago correctly, none of those 120,000 people will suffer any loss of income under this legislation. Is that correct?

Hon. Mr. Sorbara: Of those, none will suffer any loss of income. They can only be positively affected by the bill in terms of their income, that is, some of them do acquire the right to apply for a supplement under this bill, but no one is negatively impacted. Those pensions currently being paid are not addressed in the bill.

Mr. Black: Of the approximately 120,000, did I understand correctly that approximately 20,000 or 25,000 might anticipate getting an improved benefit as a result of this legislation?

Hon. Mr. Sorbara: That is the statistic we have been working with. You have to understand that the statistics are not entirely as accurate as we would like them to be, because the board has historically not tracked the income levels and the earnings of individuals once a pension assessment has been made.

For example, you injure your back. You are awarded a pension of seven per cent. The board puts into place the procedures to pay you that for life but the board does not check back with you five years from the date of your injury to determine whether you are doing all right in terms of your ability to earn; historically it has not done that. But based on modelling, analysis and sampling, I think the figure of some 25,000 will prove to be accurate.

Mr. Black: One further question: One of the thrusts of your legislation is to provide an improved rehabilitation emphasis for people who are disabled. Is that correct?

Hon. Mr. Sorbara: That is right.

Mr. Black: Will any of the people who are currently receiving pensions be eligible for or have any further access than they may have had in the past to those rehabilitation programs?

Hon. Mr. Sorbara: Yes, they will. The bill provides specific reference to current pensioners to ensure that they would have full supplements to their pensions during periods of vocational rehabilitation. In addition to that the board, as I understand it, is working on some measures not requiring statutory amendment that would provide vocational rehabilitation to a number of the current pensioners who have not had and up to this point would not have expected to have had vocational rehabilitation. That might be something you would want to pursue on Thursday with the board.

Mr. Brown: I am looking at page 3 of Mr. Clarke's proposal where we talk about appeals. I am wondering if we are looking at a reassessment of significant unanticipated deterioration. Are these appeals limited to the injured worker, or does management or the employer have the opportunity to use these appeals? It could be the other way. It could be that the employer argues that there is a significant improvement that was not anticipated.

Hon. Mr. Sorbara: In the case of significant deterioration, it is only the worker who can initiate that process. As far as appeals to the WCAT of a determination on noneconomic loss and the award for noneconomic loss, either the employer or the worker can appeal, if I understand the bill correctly. Counsel tells me yes, I do understand the bill correctly.

Mr. Brown: Therefore a worker would not be put in the position, having a pension, that somewhere down the road, maybe 10 years from the date of injury, an employer could come back and initiate—

Hon. Mr. Sorbara: There is no provision for that at all. It would be capricious in the extreme if that were the case, but it is a good point. It is not open to an employer under those circumstances to launch his own independent review.

Miss Martel: Just a supplementary on that, please. The employer, at

the point where the award is made to the worker, can appeal that, just as he can under the present system?

Hon. Mr. Sorbara: Sure.

Miss Martel: So that does not change. Okay.

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Hon. Mr. Sorbara: But you know, my sense is—I know I have said this before but I want to repeat it—I think we are presenting here a system that will be far less litigious. I want to point out that there is for the first time in the area of permanent partial disability pensions, a community of interest between the worker who is anxious to have an opportunity to return to work and the employer who is notionally paying the costs of pensions through assessment rates.

That community of interest is that to the extent a worker is able to return to the workplace and earn a living, the system is less expensive. In a system where the issue is whether it is going to be a 12 per cent pension, a 10 per cent pension or an eight per cent pension, all the battle is about what the pension is going to be and how to assess that.

The employer has no community of interest with the worker. They are not fixed on the same objectives. If it is 12 per cent, that means the assessment rate that employer will have will reflect the fact that worker is going to be paid 12 per cent of pre-accident earnings for the rest of that worker's life. The employer says, notionally: "Okay, but I do not want to hear any more about it. If that is the final determination, fine."

Under the dual-award system, particularly shaped as it is in a context where we are trying to do more to help injured people return to work more quickly, there is a community of interest with the employer. That employer will realize that if he can do all he can, or she can do all she can to help that worker get back to work, yes, the size of the economic loss will be smaller because the worker, rather than trying to live his life out on a pension, will be living on his ability to earn. I think that is good.

In drafting public policy, you have to find those sorts of communities of interest or else we become a system in a society in which every little issue is subject to litigation.

Miss Martel: On the point of the dual-award system, you mentioned he can live on the second payment recognizing the loss of earnings. We all know in here that is not a guaranteed payment and that is the real problem. A worker may be left with only living on the noneconomic loss portion of that payment. If we were going to be serious about looking at the injured worker's actual wage loss, why would we not put into the bill that the worker is going to be compensated on the basis of the actual wage loss and not what the board considers he or she can earn?

Hon. Mr. Sorbara: I think that issue was discussed around here a number of years ago. I think you have to take into consideration more than actual wage loss. What you have if you have actual wage loss is a system like Saskatchewan's where they review it every year. What the act provides for is to take into consideration a number of different criteria for making that determination. But I do not think, with respect, that we should superimpose upon how that system will work. The experience of the board over the past 10

years has been that the language has almost driven the board to make arbitrary determinations.

For example, we have chosen and put into the statute the words "suitable and available employment" as a statutory indicator of what we are looking for within those determinations. We have said the work has to be suitable. That is very subjective. What is that worker really capable of doing? And it has to be available. What is in the community that that worker can do? Remember, those words are going to be the subject of some jurisprudence very soon in the system.

Miss Martel: The board determines that, right? Is that not therefore some of the problem?

Hon. Mr. Sorbara: Of course, but it has to determine it on evidence. Any analysis of a quasi-judicial system suggests, and you should know this, that arbitrary determinations will be overturned. That is part of the mechanism that the act already has to ensure fairness and justice.

Another point that I think it is appropriate to remember as we look at this bill is that this is the first time the parliament of Ontario has considered reforms to the workers' compensation system with a mature Workers' Compensation Appeals Tribunal. The last time this exercise was undertaken there was no tribunal. In fact that bill, Bill 101, created the tribunal. We are now working and designing models within a system that has to contemplate that there are independent mechanisms for adjudicating and giving life to statutory language, words such as "suitable and available employment," which were not in the Saskatchewan act.

Miss Martel: You are saying that the answer then is, "Never mind; it doesn't matter what the bill says because everyone can appeal to the WCAT in the end anyway and hope the WCAT will make it right."

Hon. Mr. Sorbara: No.

Miss Martel: I think what you setting up is just a ridiculous set of rules that are not going to work because it has left so much arbitrariness and discretion to the board. We are going to have every person having to take it to the WCAT because he is not going to get any justice in the system. Then you still have the WCAT subject to the board of directors at the board. They can have their opinions overturned in the end anyway. Why would you let a system like that be put into place?

Hon. Mr. Sorbara: No. With respect, the board cannot overturn WCAT decisions that are determinations of fact.

Miss Martel: They are doing it now on the section 86n cases.

Hon. Mr. Sorbara: No, they are not doing it now.

Miss Martel: Yes, they are.

Hon. Mr. Sorbara: They are holding decisions where there is an issue of policy or law. Questions of fact cannot be overturned under section 86n. Above and beyond that, I make the point simply to say that this committee and its predecessors have considered a whole bunch of amendments to the act in the 70-odd years this system has been around. This is the first time that we, as a

parliament, are doing that with a mature, independent, autonomous appeals system within it.

As a lawyer, I know the implications of a leading-case decision. As an administrator, I think the board is clearly aware that whatever it does to put life into the phrase "suitable and available employment," if not responsive, just and fair, will as quickly as you can get the papers in be the subject of a WCAT review.

In saying that, I do not think I am saying we are simply not worrying about our statutory and legislative obligations here and leaving it to the WCAT. I am saying that what the bill does is to reflect the balance that is necessary for the board to be able to make appropriate decisions. It is a decision-making body. It must respond to facts and circumstances. It has to deal with that worker who has a job offer in an area where he has just gone through two years of training and he says, "Sorry, I don't feel like taking that."

The board needs the capacity to say: "For our purposes, that is suitable. You have just been offered a job. It is available and it is suitable. You have just completed a course at Cambrian College to do that very work. We have to determine your pension on the basis that this is suitable and available."

I do not think you would want a system that did not have the capacity to make those judgements. But remember when you claim the board will be capricious, arbitrary and unfair that we are considering, for the first time in our history, a system that has a fully mature appeals mechanism and a quasi-judicial body to ensure fairness.

Miss Martel: If I may just make a comment on that, the WCAT is in place and the board is already being capricious and arbitrary, because these same types of things, the deeming of workers, the phantom job and the question of pension supplements, are taking place at the board now. I raised with you, during the course of the debate on second reading, at least three cases where workers had been cut off benefits or not allowed to receive benefits, because the board determined they were capable of doing work that was not in the area in which they lived, that they had never been trained to do, that they did not have the education to perform and that they did not even have the language skills to do.

I am saying to you that it is really impossible for you to say here, "We are looking at this in the context of the WCAT Tribunal and it will work better once we pass it."

Hon. Mr. Sorbara: I just pointed that out.

Miss Martel: It is happening now and it is causing people to be cut off or denied benefits.

Hon. Mr. Sorbara: But with all respect, it is happening under statutory language that almost demands that it happens.

Miss Martel: Oh, no, it does not. No, it does not.

Hon. Mr. Sorbara: Under statutory language now—

Mr. Black: With all due respect, Mr. Chairman, on a point of order: I do not think we are here to debate the past weaknesses of the Workers' Compensation Board or the Workers' Compensation Appeals Tribunal. We are here to look at new legislation that is being proposed and is going to be studied.

Mr. Mackenzie: How do you assess the new legislation if you do you not?

Mr. Black: On the basis of its merits, I would suggest, Mr. Mackenzie.

Miss Martel: It is happening now, Mr. Black. That is the point.

Mr. Chairman: The interjection is timely since it is six of the clock. We shall adjourn and commence again on Wednesday afternoon, following routine proceedings, in this same room. We are adjourned.

The committee adjourned at 6:01 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT
WORKERS' COMPENSATION AMENDMENT ACT
WEDNESDAY, FEBRUARY 15, 1989



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Martel, Shelley (Sudbury East NDP) for Mrs. Grier

Mackenzie, Bob (Hamilton East NDP) for Mr. Wildman

Clerk: Mellor, Lynn

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Labour:

Sorbara, Hon. Gregory S., Minister of Labour (York Centre L)

Di Santo, Odoardo, Director, Office of the Worker Adviser

Mandlowitz, Jason, Director, Office of the Employer Adviser

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, February 15, 1989

The committee met at 3:27 p.m in room 151.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Mr. Chairman: The standing committee on resources development will come to order. We are here to continue our deliberations on Bill 162, An Act to amend the Workers' Compensation Act. Last day, we heard from the minister. The minister will be here today, but in consideration of the members of the committee, I think we should go ahead and begin our proceedings now.

Miss Martel: I have a point of order before we begin, Mr. Chairman: I wish to apologize to the people who are here waiting to hear the presentations, but there is a question that this committee must decide in the very near future; that is, given the present state of what is happening in the House, none of us knows when we are going to actually get out of here or what we are going to do about those hearings that are going to have to be cancelled.

In view of the fact that we will probably have to do some rescheduling, I would also like to make another point to the committee. I, for one, was extremely surprised by the large number of requests to appear that we have received from organizations across the province. The clerk gave us some 612 we have got so far that have made requests.

I did a quick calculation of the number of submissions we can hear on a day, which is somewhere around 20, and the communities we will be in, which is 17. It came out to about 340 submissions in total as probably the highest amount that we are going to be able to hear as we take this committee out on the road.

What I am suggesting is that there are a large number of groups out there that do want to have input—no one can deny it—and we are going to be denying a large number of those groups the right to come and be heard on this bill. I would like to put forward to the members of the committee the fact that, given the large number of people who will not be able to be heard and given that we are going to have to reschedule anyway, given the events that are occurring in the House right now, the committee should give every consideration to making a motion that we will hear all those groups that want to appear before us.

I would like the committee to discuss that at this point, Mr. Chairman, if that can be done.

Mr. Chairman: We will entertain a short discussion and then require a motion, though, so that we do not go on for ever without a focus.

Mr. Brown: I am certain that, from my point of view and probably the government's, we want to hear all the people we can hear and as expeditiously as possible. We are quite prepared to continue with the public hearings next

week. We have made a commitment to the public hearings, we want to hold them and we are quite prepared to go out.

I understand, and maybe the clerk can confirm for us, that some of the groups have been asked to go in umbrella organizations where their interests are similar. I do not know whether Miss Martel's numbers indicate any consolidation of groups. We should have a look at that, but from our point of view, we certainly want to have the public hearings and hear all views and to commence immediately to do that.

Mr. Chairman: Okay. Mrs. Marland, and then I will ask for a motion from someone.

Mrs. Marland: I am encouraged to hear a member of the government benches say that they too want to have public meetings. I am particularly encouraged about that, because I know it did take some convincing of the government to come to that position. Now that they are there, I am really pleased to hear them reconfirming it.

Mr. Chairman: Do not tease the bears, Margaret.

Mrs. Marland: I am trying not to. The only problem with public hearings is that to do that properly you have to have all members of the committee present in order to hear what the public is saying. I can only speak for our caucus which has 17 members. If we take out our leader, House leader, whip and two other people who do not sit on committees, we are very quickly down to about a dozen people who are eligible to sit, time-wise.

If the business of the House is proceeding, if the government is still calling legislation it wants to deal with before the House rises, then, as responsible members of the third party, we also wish to speak in the Legislature on those pieces of legislation that are being debated. We want to hear the debate and we want to fulfil the responsibility we have as we serve in the House.

Quite frankly, we cannot do both with the size of caucus we have. It is very easy, if you have 94 members, to cover committees and to cover debates in the House. We simply do not have enough members to do that properly. The Progressive Conservatives want to hear both sides of the issue on this legislation on the Workers' Compensation Board. Bill 162 is an important piece of legislation to the future of this province, one way or another. We simply cannot do it. We feel that the public hearings must proceed and include those people who have indicated that they wish to be part of it.

Obviously, if we have 612 groups, that is almost 300 groups fewer than were heard on bills 113 and 114, the Sunday shopping legislation. If we could serve those two pieces of legislation with the courtesy of the kind of public hearings this Legislature normally conducts, then I would suggest the very least we can do is the same thing for Bill 162.

If the members to my right here are going to place a motion to deal with the public hearings in an organized schedule when the House is not sitting and trying to deal with government legislation in the House at the same time on the same days, then that is a position we would be supporting. Plus, we do have some other uncompleted business for this committee to deal with as well, which I would like to speak about in a few minutes.

Mr. Chairman: Okay. I think before we go any further in the debate

we should have a motion before the committee that we are debating. Miss Martel, you indicated that you had a motion.

Miss Martel: Yes, I do, Mr. Chairman.

I would like to move that, in view of the enormous demand we have received from all groups interested in this legislation, employers, unions, individuals, etc., and in view of the fact that Bill 162 will have a dramatic impact on workers in Ontario, that this committee consider rescheduling its hearings to accommodate all of those people who want to speak, but also that every consideration be given to the fact that we would like this as much as possible to be done when the House is not in session so that the opposition parties can man those committees.

Mr. Chairman: Is the motion understood? Can you write that out, Miss Martel? Do you want to speak to that motion, first of all, and then when you finish speaking to it actually write it out in case there are references to it later?

Miss Martel: I can do that, Mr. Chairman. When I opened the discussion I made fairly clear the numbers in terms of the groups that have made a request to come before us and the number of groups that will be omitted given the present schedule as it stands.

I also made the comment that we all know that the schedule is going to go awry starting this week because we are due to hear people in Hamilton and Oshawa next week. That is not going to happen given what is happening around here, and in all likelihood we will have to cancel more of the hearings the week after.

We are going to be in the position of having to reschedule anyway, and given that we are going to have to do that, we should now look at accommodating those groups that want to come before us. I do not think it can be done all next week as the member for Algoma-Manitoulin (Mr. Brown) would like to look at, but we are going to have to give some serious consideration to having the hearings when the House is not in session.

Mr. Chairman: If I understand it correctly, there are two parts to your motion. One is that the hearings be rescheduled when the House is not in session and, two, that everyone who wishes to be heard shall be heard.

Miss Martel: I think that puts it the other way. I said that the committee should have every regard to accommodating all those groups that want us to hear from them, but having regard for the fact that the House is still sitting, this cannot be done during the whole time that we sit, and that we should give every consideration to doing that when the House is not in session.

Mr. Chairman: Okay, I think the motion is clear. Mrs. Stoner and then Mr. Dietsch.

Mrs. Stoner: I appreciate where the member is coming from in her resolution but I do have some problems with it. First of all, we spent a great deal of time setting up that schedule, and although there are changes obviously going to take place with that, to open the whole thing up for reconsideration is not appropriate. There are a couple of factors that are not taken into consideration.

First of all, we do not know how long that break period is going to be

and we do not have any indication. In my view, therefore, the motion is premature. The other factor is that we have set up a situation where we are hearing from the umbrella groups. Obviously if we miss Oshawa and Hamilton, we are going to go back to them at some point if we do not next week, and to any others that do not happen.

I would suggest that probably the appropriate thing to do would be to look at scheduling later, if we decide we want to, when we have an idea of how long we are going to have between sessions and what input we have had from other organizations. I do not think it is appropriate to endorse the motion at this time.

Mr. Dietsch: I would like to share a couple of comments with the committee. I appreciate and understand exactly what the member is trying to do in terms of trying to accommodate all the individuals who would like to have the opportunity to voice their concerns before the committee. As many have indicated already, that is an important aspect. We want to accommodate that at every step possible.

The difficulty, of course, is in trying to incorporate that type of an attitude in the uncertainty of what happens around this particular House. Some are perhaps more familiar with what happens than I. However, it is important to note that we do not know. The future is uncertain with respect to exactly when the hearings are going to start to take place. We assumed we would be in them now, and we went through a great deal of deliberations in order to establish a process and a format to go through those hearings. However, that seems to have changed and seems to be a state of concern as each day goes by.

We are all familiar with the fact that the House leaders are meeting tomorrow. We hope there will be some type of a compromise solution that comes out of those particular meetings in dealing with our future as to when the committee hearings will be able to take place. There are a couple of alternatives, and one of them my colleague pointed out, in terms of meeting while the House is in session. Certainly we are prepared to have hearings of that kind, but we recognize the difficulty that that puts on the opposition members of this committee as well.

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What I would like to suggest to this committee is that we stand down this particular motion and charge the subcommittee that we had originally set up the schedule with. We will know by Monday pretty much what is going to happen next week and have some type of idea where we are going with it, so I suggest that we should stand down the motion until Monday and charge the subcommittee that was structured to try to wrestle with the question that is before us.

In addition to that, I think my colleague brought out the point that many of the groups are coming from a particular area and sharing the same kinds of concerns that are going to be coming before the committee. That is an important aspect. I think we talked about those points of view being shared under umbrella groups. We knew full well that a lot of those groups would have the same types of presentations, the same types of concerns that umbrella groups would be able to present on their behalf. That may cause us to be able to sort out that aspect of the question.

The other concern that I have is that the group before us now seems to be somewhat shy in terms of representing the other half of the question, that

is, business individuals and their concerns with respect to the cost of compensation. I think it is important that we at least hear that and be perceived as gathering all the facts before we make a decision.

I would like to suggest that we stand down this question until Monday and have the subcommittee of this particular committee, which is represented by all three parties, deal with an agenda for Monday's committee meeting.

Mr. Chairman: I will just remind members that by tomorrow we have to tell our clerk something to say to the groups in Hamilton and Oshawa.

Mrs. Marland: If I heard the motion correctly, it is simply that the hearings be rescheduled. The motion is requesting that the hearings be rescheduled and that these hearings not be conducted while the House is sitting. I do not think that is a very difficult motion to support. There are two aspects to this.

Yes, we could wait until Monday, but I think that if we are going to be a responsible legislative committee, we are going to recognize that, as critical and difficult as our personal schedules are with all of our work, all the groups and individuals who wish to come to the committee have difficult work schedules as well. They may in fact have travel arrangements, hotel accommodation, other conflicting meetings and so forth.

We now know we have to change next week anyway, because as far as I understand it, the Legislature is sitting next week. Are we going to say to these people: "Your timetables really are not too important. We will accommodate you at the last minute"? That is apart from the responsibility that our clerk has in rescheduling any of these groups.

I think we should give them as much advance notice as possible and we should make a decision about when the hearings will be held and when they will not be held, which is when the House is sitting. Quite frankly, as far as the numbers of people are concerned, surely we can decide that we will at least hear all of the people who responded by the date that was given when we sent out invitations and advertisements to hear from individuals and groups.

Let's face it, the compensation of workers in this province is one big mess, so if we are going to get into it with this legislation, we had better make sure that we do it right the first time.

Mr. Dietsch: I am glad you appreciate the way that you have developed the system. We are trying to straighten that out. I would like to clarify the—

Mrs. Marland: No, I still have the floor, Mr. Dietsch.

Mr. Chairman: Mrs. Marland did not interrupt you. Go ahead, Mrs. Marland.

Mrs. Marland: I think what is important is that if we are going to do this, we had better do it right. We had better do it as co-operatively as possible, and that means within the committee and within those groups and individuals who want to come before the committee. I cannot see any problem in supporting the resolution. At least it gives some direction to our clerk and some confirmation to those groups so they know what they can anticipate in terms of their plans and arrangements for the next three or four weeks.

Mr. Mackenzie: I do not know of any other issue, literally, in the almost 13 years now that I have sat in this House that has caused as much of a problem and has been as hotly contested as the issue of how we are treating injured workers in Ontario. Some of you who have been here as long as I have know it has been at the centre of many disputes, many arguments and many demonstrations at this Legislature.

I do not think there is a group of workers in the province which, in my opinion, has been harder done by than some of the injured workers, particularly when we are dealing with back problems, pensions and some of the difficult toxic establishment cases. It is a major problem that affects the workers who are involved for the rest of their lives.

I do not think we can argue who set up the system or who was wrong in the system we have now. What we have to argue is whether we are now genuinely trying to make some improvements in the system. The minister thinks he is with his bill. Some of us have some reservations, but supposedly this is a serious effort to take a look at a long-standing and serious problem.

That being the case, the first thing that struck me—I apologize in that I was not in on the earlier planning on this committee—is that you have 612 requests for hearings now. As the Labour critic, not directly involved with this committee, I have been getting fairly angry calls, the last one just yesterday from somebody the minister will know, Norm Carriere of the United Steelworkers of America, who is raising the serious problems they are having.

You may have an umbrella group that wants to appear before this committee. Take my own city of Hamilton. Obviously, the area council will be an umbrella group speaking of only one union, the steelworkers. If you think that umbrella group can speak for Local 1005 or the Case local, International Harvester, or National Steel Car Ltd., which has one of the worst records in the business when it comes to injured workers, you are sadly mistaken. They are already raising hell with their union, as a number of other locals are with other unions, about why they do not get a hearing. You are going to have more requests than even the 612 you have, although it may be too late to get those requests in.

You have a couple of problems you simply have to face if you are serious about this bill and this legislation. One is that you do need some rescheduling, unless there is a miracle that happens tomorrow, and I do not see it at the moment given what we are told is wanted in the way of legislation. We are going to be here next week and probably the week after. That may change, hopefully, but that is the situation.

That means you have a number of hearings scheduled. I can tell you in my community there is a lot of anger already if this thing is cancelled. The word is starting to get out that it may not go ahead in Hamilton. When I say anger, I mean a lot of anger. You have an awfully large group of people in the city of Hamilton who want to be heard on this, and not all of them are getting heard at these hearings.

You also have the problem that Shelley Martel's figures are much too tight, allowing 15 or 20 minutes or less than that. Using all the time, you will not get 340 presentations in the seven days of hearings unless they are limited to about 10 or 12 minutes. There is just no way some of the major groups on both sides of the issue can make their case in that 10 or 12

minutes. Anybody who has sat on one of these committees before knows you are going to have that problem.

First, we have to make up the time we are likely to miss, at least the first week, maybe two weeks, as it is now scheduled. Second, we have one heck of a lot of people—to them it is what happens to them and what has been happening to them all their lives—who are not going to get to appear, representing groups.

Why is it so important, apart from the health of the workers themselves? I do not know if anybody in this room has any idea what the legal aid clinics in our communities, what the local unions, what the injured workers have spent in going to bat to try to solve some of the problems injured workers have had. It is a multimillion-dollar bill in the labour movement alone.

We have done a number of things trying to improve that such as the worker advisers. There are a number of steps we have made to try to help and improve the operation of the board. It still has not resolved it all by any means. It has not resolved the situation of many of the workers.

Of course, there is the serious question whether the minister is right or many of these groups are right in what Bill 162 is going to do for them. If you want some real problems—it may not concern you; it concerns me—then just try to say to these people who have been fighting this a lot longer than I have sat in this Legislature, "You're not going to have your chance to have your day in court before this committee." Is it or is it not really a serious effort to improve Bill 162? That is why I say you are going to have to extend it to give these people the right to have a hearing before this committee.

The other issues are auxiliary. That may give the minister some problems, because obviously if you extend these hearings, it may be that they are going into the summer; I do not know. I recognize the problem that gives the government. I think we have to be very straightforward and honest on this, though. You have 600-plus groups that have to have their day in court. That has to be done. That means extending it. It means rescheduling it as well. If we do not do that, then this whole exercise is not going to achieve either what injured workers want or what the minister wants. You are going to have some real problems with it in Ontario.

You have to make those decisions. I think the one raised by Mr. Brown, whether we try to hold hearings in any event, is an auxiliary decision. I will get hell probably from my caucus for saying this, but you might hold hearings here in Toronto on the days that are scheduled for Toronto in the afternoon or after orders of the day or while the House is sitting. I do not agree with that because there is a lot of important business before the House some of us like to go to, and you are interrupted with bells, votes and all those kinds of things.

But if you think, without giving the impression that you are really trying to ram something through, that you can continue hearings across this province with two opposition parties who are in a situation where, like yesterday, there can be 30-odd Liberals absent in the House and you still have more people there than the combined opposition parties—it is literally impossible for us to be here, to be looking at the bills coming before this House and to be doing a job travelling around the province on that committee.

You do not have that option unless you have decided you are going to ram it through with your numbers and have only Liberals on the committee. You do

that and I am going to tell you that you will not have much credibility in Ontario. I do not know how else to put it. I do not know how to put it any stronger than that. I think you simply have to give these people their chance, and that does mean extending and already some rescheduling, as I say, unless a miracle happens that gets us out of here tomorrow. I do not think any of us expect that.

Mr. McGuigan: I could not agree more with Bob Mackenzie, having been around here almost 12 years now and dealing with these cases in my constituency office. My office is not a heavy labour office because my riding is agricultural, but I certainly have enough of these cases and I feel, as he does, that we must deal with these.

I am afraid the result of that means we put it off until next summer. Goodness knows what other subject is going to come up and steal from our time. I think we have to go ahead and do this job. Bob was putting it far more eloquently than I could, because he comes from a labour area and he knows this subject as well as anyone around here. We must do it. The pressure must be on the people here to get on with the job, not to delay it. I am afraid the result of that is to delay it.

I point out to Miss Martel that we recognize the numbers, but it is also difficult for us to supply the six people who are required on our side, as it is for you to supply the two. We have a large number of people who are ministers and off on various things. It is not quite as easy as you suggest for us to supply the people here. I am afraid I could not support the motion.

Mr. Chairman: Is there anyone else before we vote on the motion?

Miss Martel: Yes. Part of the reason the motion was moved today is that Mr. Black approached me yesterday and said we would have to deal with this question and he wanted it dealt with today. I am rather surprised he is not here. I do not know where he is. I am sure he has important business, but he did come to see me and said this was a very obvious problem.

What he said to me was that the word on his side was that we were going to be sitting here probably all the way through, with maybe a week or two off during the school break, and that we had better do something serious about dealing with the large number of cancellations that were going to result. That is part of the reason the motion was put today. I assumed he would be here to speak to it as well. He said he had talked to some of his colleagues about this so that we could have a debate on it today.

The second point I would like to raise is that the reason I would particularly like to get some commitment from this committee concerning accommodating all of the groups is that I think we have to indicate to the House leaders of all three parties in the very near future that we intend to do that and that the committee intends to make a request, then, to sit during the summer.

I do not know how we get out of trying to let the House leaders go on and on and schedule business, etc., without making it very clear to them that this committee has made some decisions regarding the groups that will appear, how many will appear and what that is going to mean in terms of the schedule around here and when we will sit. I think that is another fact that should be taken into consideration. I do not think they can start ordering business and dealing with what members of the House are doing if they do not have a clear

indication from this committee that we intend to accommodate everyone during the course of these hearings.

Perhaps I can make a comment on the umbrella groups. I questioned the clerk yesterday to find out which groups in which areas had called, and were there a specific number of steelworkers, etc. I do not want to get into the game of trying to say all the steelworkers have to come under the district office and appear when district 6 appears here in Toronto. I do not think we have ever done that before with any other committee that has ever sat. I do not think we told all the church groups on Bill 113 and Bill 114 to come together and make their representation together as a group, and I do not see why we should start doing that now.

Also, if I can make one response to Mr. Dietsch, I do not think I ever suggested the employer should not be heard. I was very clear when I moved the resolution. I think I even said the employers first, before the trade unions. I expect that everyone has a say and everyone should have a right to have a say. There is no question of which side I represent. I do not think anyone in here is foolish enough not to know that, but I have never suggested the employers or businessmen should not be heard.

Mr. Dietsch: Let me just correct a few points for the record. With respect to Mrs. Marland's comments, I do not understand the motion to read exactly as she has said. Quite frankly, I see the motion dealing with next week as not even being on the table. My suggestion is to stand down the motion that is currently here and deal with the motion on the table for next week. I think members of our party have indicated our preference is to sit to hear the concerns of the people which are there.

But we also recognize and are willing to be very congenial with regard to the members who suffer from low numbers. I understand that side of it. In reference to some of the comments Mr. Mackenzie made about the deep concern he has, I think we all share that deep concern around this table. I think it goes without saying that I as well as anyone else sitting around here—the minister has said it—want to get these improvements into the system for the benefit of those workers who are suffering from difficulties now.

It is extremely important that we deal with the idiosyncrasies within the workers' compensation industry in order to enhance it for the benefit of those workers. I think that is first and foremost in everybody's mind, to assist workers in getting back to work, to make them feel a more productive part of today's society. There is no question about that.

I am not suggesting for one moment that Miss Martel was commenting against business. I was going by the list I saw in the package. I know exactly what side she comes from. She should know I was the president of a union. That does not make me disease-free. However, I think in dealing with the issue we have to look at some of the groups in there and look at the different branches groups fall under. I think we talked about that umbrella.

To deal with the issue, I think we have to deal with it in two prongs: first, the motion that is before us on the floor right now, and I am suggesting and would move a motion that we table that until Monday; and second, dealing with the hearings next week, while it is my preference that we go ahead, I feel we should cancel those meetings next week. Dealing with them in proper sequence, I would move that we table the motion on the floor right now until Monday, which I understand is a nondebatable motion; I am not

exactly sure whether we run by Laughren's rules of order or Robert's or whose we use in this committee—

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Mr. Chairman: When in doubt, you know which ones we will use.

Mr. Dietsch: That is why I thought I would clarify it up front.

Mr. Chairman: There is a choice before the committee: you can deal with the motion as it is or you can table it until after the House leaders' meeting tomorrow, during which there may or may not be some light shed on the whole question of timing. If Miss Martel wanted to voluntarily hold off the vote on her motion until tomorrow afternoon, when the committee regularly meets anyway, I think that would allow us time. We would still have to pull the plug on the Hamilton meetings and the Oshawa meetings anyway, as Mr. Dietsch suggested, because it is almost certain the Legislature will be sitting next week at least.

Mr. Mackenzie: With respect to that, may I make a suggestion? Mr. Dietsch will recognize that just pulling the plug or cancelling the Hamilton-Oshawa meetings is not good enough. Those meetings have to be rescheduled, so whether you pass this motion or hold fire on it, the understanding is that we will reschedule those meetings. That is the very minimum we can do.

Mr. Dietsch: Absolutely.

Mr. Chairman: That is a given.

Mrs. Marland: Perhaps you could read the motion now that you have it in writing, Mr. Chairman.

Mr. Chairman: I would be pleased to. I will leave out the whereas, because that would engender another round of debate.

Miss Martel moves that the committee direct the clerk to reschedule the public hearings, in order that all groups who wish to be heard will be accommodated and that every consideration will be given to holding these hearings when the House is not in session.

That is the motion. You can deal with it or you can postpone it until tomorrow.

Mrs. Marland: If this committee does not make a decision on whether we want to hear from all the groups we invited to make submissions—we put out an invitation. I think we advertised. We gave a deadline date. If we are not going to hear from all those people who complied with the deadline date, then we had better say so today, because I will tell you, the next question is, who is going to decide which groups we are going to hear from? It is not a subcommittee I would be very happy sitting on.

This committee has to make some decisions today. First, if the House leaders are meeting tomorrow, as we understand, how in heaven's name are they going to know what it is this committee wants if we cannot make a decision ourselves? How can we give our House leaders any idea about what is needed? If we make a decision that we are going to hear from all the groups that responded by the given deadline, then all the clerk has to do is look at the

number that responded by that time and at least we know what our work is; it is cut out.

If we are not going to do that, the members of this committee had better decide whether we are going to hear from 300, 400, 150 or whatever the number is and then decide which groups, because I am quite sure the clerk is not going to decide which groups will be heard from.

We have to make a decision today, so that tomorrow, when the House leaders meet, they will know whether this committee's work is 612 groups and individuals or whether it is 150 or whatever we arbitrarily pluck out of the air. We on this committee have to give some leadership to the House leaders so they know how to schedule what is before us, whether it is before us in this next break or in this next break and the break following. As far as the decision to put it off to Monday is concerned, I would have to ask why.

As Mr. Mackenzie said, it is logical that we have to reschedule next week anyway, but why can we not make a decision today based on what we want to do with the public hearings on this bill? That is simply what this motion is about.

Mr. Tatham: I admire Mrs. Marland's comments. Her eloquence is wonderful. I would like to suggest that we should hear everybody possible and we should start as soon as possible, because time goes on. I do not think we can wait for the House leaders to do whatever they are going to do, because time goes on. We do not know what holidays will be here or what time we will be off. We should get on with it and do it and hear everybody.

Mr. McGuigan: Anybody who would read the Hansard from this meeting would know, first, we want to hear the people. Second, we want to hear them in the break period and we want all parties to be available.

Failing that, we want to go ahead even without a break period. They can take from that message that they had better clear up the backlog of business they have and close down this Legislature and let us get on to this so that all three parties can take part in it. Now, that message is in everything we have been saying here this afternoon.

Mr. Dietsch: Can I just add one more point, Mr. Chairman?

Mr. Chairman: Right after Mr. Wiseman, yes.

Mr. Wiseman: I agree with Mrs. Marland. We do have one of our House leaders joining us in the back here, and I am sure that the member for Windsor-Riverside (Mr. D. S. Cooke) would say that her suggestion of giving some direction to the House leaders, whether we are going to hear all the ones that were in on time or not, would be helpful to give them some idea of how humanly possible it is to schedule if we do adjourn in a couple of weeks or so. Or we could ask them if we can start earlier when the House is sitting, or whatever we decide here today, tomorrow or whenever it is. I think the House leaders could get some direction from us.

Mr. Chairman: The fact that one of the House leaders is here will be of assistance at the House leaders' meeting. It does not help us here today, but it may help them tomorrow.

Mr. Wiseman: I think he would agree it would help if we did some of the things that Mrs. Marland suggests. We are not asking here today. Let's not put him on the spot until he talks to his colleagues.

Mr. Chairman: Two brief comments, one from Mr. Dietsch and one from Mr. Mackenzie, and then we should proceed.

Mr. Dietsch: The one point I want to make very clearly for the record is that one might interpret from what is going on here today that there will not be an opportunity for some individuals out there to put their concerns before this committee. One thing we have not talked about today is written submissions. I know we do have those on a number of occasions with respect to those individuals who do not have the opportunity to get before the committee or perhaps are not accustomed to putting their concerns before us. That is something that has not been discussed, and I want it clear on the record that opportunity is available as well.

The other point is with respect to the House leaders. The fact that Mr. Cooke is in the audience speaks very well for his interest in the subject. He can understand full well the dilemma that we are facing. Certainly, we will make sure that we pass it on to our House leader so that our concerns can be expressed.

I would like to ask the chair a very pointed question. Has Miss Martel withdrawn the motion until tomorrow?

Mr. Chairman: No. As a matter of fact, if the motion is to be stood down, there should be unanimous consent of the committee, because it is a request to stand it down. Let's hear from one more speaker and then we will make a decision as to whether there is unanimous consent to stand it down until tomorrow.

Mr. McGuigan: My colleague made a motion to table. I think you should accept that and vote on it.

Mr. Chairman: I am informed by the clerk, who knows more about these matters than I, that a request to stand it down is in order, but not a motion to table it.

Mr. Dietsch: I asked whether it was Robert's Rules of Order or Laughren's, and now I know.

Mr. Chairman: Now you know. I did warn you.

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Mr. Mackenzie: Let me make a suggestion, and I make it to Margaret as well. First, our position on feeling that everybody has to be heard is not going to change and that will be what we will have to decide; if not today, tomorrow or very shortly.

Second, we already seem to have an agreement that we are talking about rescheduling in terms of those that are definitely missing, such as the Hamilton or Oshawa sessions. The only reason I think there might be some merit in voting on this tomorrow, or very shortly, is that maybe we will—maybe we will not, but maybe we will—know exactly how long we are going to be in here. Then we will have a little better idea of what is needed when we are debating, whether or not we get the extension. If we are going to be in here until March 2, as some of the rumours say, then we have a couple of weeks of hearings to reschedule. You have the rescheduling and then the decision to make as to whether or not we hear the other groups.

If we can find out a little more by tomorrow, I have no difficulty with waiting that long. I am not sure it will resolve it. We may be back into the same argument tomorrow, but at least I would like to know what the schedule is likely to be at that point in time.

Mr. Chairman: All right, there is a decision for the committee to make. Do you wish to stand down the motion until tomorrow afternoon, which will be after the House leaders have met? Miss Martel, you must make a decision.

Interjection: Agreed.

Mr. Chairman: You agree, right. What is the decision of the opposition?

Miss Martel: If I can just make a point, Mrs. Marland has just informed me that in talking to the House leaders—I did not know the government House leader was not going to be here tomorrow. I thought he was coming back. So the government House leader is not in a position to do much of anything tomorrow in that regard.

Mr. Brown: The place goes on as normal.

Mr. Chairman: There is an acting House leader.

Miss Martel: I know, but look what happened last week.

Mr. Chairman: Carry on, Miss Martel.

Miss Martel: I do not have much faith in that. I would be willing to hold on it if I could get some sense that this question will be revisited tomorrow, and whatever the information is tomorrow (a) we will make a definite decision about accommodating everyone, which I think has to be done, because I think the signal has to go to the community that people will be heard, and (b) a decision will be clearly taken on when that is all going to happen.

I do not like that we have to stand it down, particularly because it was Mr. Black who raised with me the question of raising it today, so I did. But I will then put it down and hope that tomorrow, whatever information we have, we will deal with it then, and it will be done tomorrow.

Mr. Chairman: Thank you, Miss Martel. Is there agreement?

Mrs. Marland: As long as, in putting it down, we agree that it will be the first item to discuss tomorrow.

Mr. Chairman: Fair enough.

Mrs. Marland: Okay. I would like to speak next on another motion.

Mr. Chairman: Do you have another point of order or motion?

Mrs. Marland: No, after you have dealt with this one.

Mr. Chairman: We have dealt with this one. Is that agreed? Agreed.

Mrs. Marland moves that the committee schedule next week revert to dealing with the completion of the estimates, since the committee will not be conducting the hearings on Bill 162 in Hamilton and Oshawa.

Before members overreact to Mrs. Marland's motion, could I remind you that if Oshawa and Hamilton are cancelled for next week, and I think there is general agreement on that, the following two weeks are scheduled travel weeks for the committee. It is after that when the Toronto hearings will be held. I am only guessing here, but I feel very strongly you will not get the Toronto groups to suddenly be prepared for presentations next week here. I simply do not believe that can happen.

Therefore, if the committee should seriously consider Mrs. Marland's motion, in my opinion, next week we should go ahead and work on the estimates that we have already started; namely, the Ministry of Transportation—we have three hours left on that—the Ministry of Industry, Trade and Technology, five hours, and the Ministry of Northern Development, five hours. In my view, we are not going to be able to reschedule those other hearings for next week, anyway, so we would revert to the normal schedule of the committee next week.

Mr. Wiseman: Sounds reasonable.

Mr. Chairman: Is what I am saying understood by the members of the committee? It is not an attempt to sidetrack anything to do with the Worker's Compensation Board. I am just saying that could not happen.

Mr. McGuigan: I do not have any problem with that. I do not think our members have any problem. The problem, of course, would be rescheduling those people, whether they are going to be here and prepared. If it could be arranged, I do not think we would have any objections to that.

Mr. Chairman: I am sorry, I do not understand.

Mr. McGuigan: I do not think we would have any objections to rescheduling and having estimates.

Mr. Chairman: Going back to the original schedule?

Mr. McGuigan: If the people involved are available.

Mr. Chairman: Right, of course. I agree. That would have to be done by the clerk's office.

Mr. Carrothers: I wonder if it would not be better to find out if they could be here before we consider it.

Mr. Chairman: Of course. We would not be arbitrary in this committee, so we would have to check on that to make sure that they were available.

Mr. Tatham: I think that is the point. If people are available to come here who would like to come here, by all means let's invite them.

Mr. Chairman: You mean the Bill 162 group?

Mr. Tatham: I would think so, yes. Let's get on with the job.

Mr. Wiseman: I agree with the motion that we meet next week to discuss the estimates. When we stood them down, we said if there was time, we would finish them. It appears that there is time, so I think we should do them. I hope that the three ministers involved would be here next week if we decide this and that they find the time to come and finish answering the questions we did not even have time to ask them before.

Mr. Dietsch: I find the motion somewhat surprising, to say the least. We just spent the last three quarters of an hour discussing the uncertainty of next week over what the House leaders' decisions are going to be tomorrow. You are now taking and ordering business and you still do not know what exactly is going to take place for next week. It seems to me that we should at least know where we are going next week before we order that kind of business.

Hon. Mr. Sorbara: Obviously I do not want to interfere in any way in the committee setting its own agenda, nor can I offer any insight or shed any light upon whether or not the House is going to be sitting tomorrow. From a purely personal point of view, all of my sympathies lie, frankly, with those people who I see have taken time out of their lives and their schedules and their activities—personal, public and private—to speak to this committee in Hamilton on Monday and Oshawa on Tuesday.

I do not know, frankly. I am not an expert on the traditions of this House to the extent that you are, Mr. Chairman, so I do not know whether there are any unusual circumstances where committees hold public hearings outside of the confines of this building while the House is in session. If that is a long-standing and inviolate tradition, I would like to know that.

What I do have some problem with is this—again, I reiterate that my sympathies are with the people in Hamilton and with the people in Oshawa. I have sympathy for them. I find it somewhat inconsistent that at one and the same time there is a sense from some members of the committee that we move heaven and earth to hear everyone who needs to be heard and yet, at least for Monday and Tuesday of next week, there is a question of whether or not committee members—the six members over here and the chair and the four members over there—could absent themselves from the House for those two days, so that the people who have already arranged their lives to speak to this committee on an important bill could do so.

My suspicion is that for that to happen, the government would not fall, nor would anything else of great moment happen here that otherwise would not happen. I have not seen what the orders of the day or what the agenda for next week will be. But once again, I guess I have a question. Perhaps the clerk can answer it or the chair could answer it or someone could answer it. Is it an inviolate tradition that a committee does not hold a public hearing outside of the confines of this building when the House is in session?

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Mr. Chairman: First of all, there would be nothing to prevent us from doing it. However, I would remind you that there was a major battle fought around this place over the reluctance of the opposition parties to deal with this bill while the House was in session, particularly the whole question of travelling and holding public hearings. I do not think it is a useful suggestion, at this point, to ask this committee to travel and hold public hearings in the middle of trying to determine what we are even going to do with our presence here in Toronto.

I would strongly urge the committee members not to entertain the minister's suggestion that we travel to hear submissions on this bill while the House is in session.

Hon. Mr. Sorbara: If I could just respond to that, I do not really want to interfere and I really am trying to better understand some of the background on this, but I do want to correct the record.

I was not suggesting that, as a matter of principle, the committee agree to travel during the time in which the House is sitting, save and except that people are expecting to come to this committee, and I am only referring to next Monday and Tuesday. That certainly is some travel outside of Toronto while the House is sitting—presumably the House will sit. I was not in any way suggesting, as a matter of course, to accept that principle. I reiterate, I am thinking of those people who have already arranged their weekends and their lives on Monday and who, on very short notice, would have to be told that the committee was not going to be there.

Mr. Chairman: First of all, it would need an order from the assembly itself, if I understand the rules properly. That, in itself, I suspect—and this is friendly advice to the committee—would require a day-long debate to get it through. I really think the committee would be unwise to consider that suggestion.

Hon. Mr. Sorbara: I think what you are telling me is that there is a fairly well-established tradition.

Mr. Chairman: I am not sure it is so much a tradition as the politics surrounding this issue.

We do have a motion before us from Mrs. Marland that we should proceed to deal with.

Mr. Brown: I was just going to say that I certainly have no objection to hearing the estimates. What estimates are supposed to be coming here?

Mr. Chairman: We had three hours left on the Ministry of Transportation. Remember, the Minister of Transportation (Mr. Fulton) went to the hospital. We had five hours and 45 minutes left on the Ministry of Industry, Trade and Technology, and five hours on the Ministry of Northern Development. There is lots to occupy the committee.

Mr. Brown: The only point I would make is that in hearing those estimates, I certainly want the groups that would be coming to see us in Hamilton and Oshawa to be fully aware that we are not putting these estimates ahead of their interests.

Mr. Chairman: Absolutely. As a matter of fact, it is in their interest that they be rescheduled to another date rather than try to do them next week.

Mr. Brown: Yes, but I want them to know that we did not displace them to hear those estimates.

Mr. Chairman: We are all together.

Mrs. Stoner: I looked yesterday at the rule book on this question, anticipating that there was going to be some discussion and I could not see where, it was anyone's decision other than the committee's. I think it is section 130 but I do not have the book. It referred to a committee decision as to whether it wished to travel, period. We do have budget approval for travel. Frankly, it seems to me lucky for this committee that both Oshawa and Hamilton are relatively near to Toronto. They do not require overnight travel or any great inconvenience in use of time. Perhaps to carry on with those hearings would be the most appropriate decision and the simplest one, frankly.

Mr. Mackenzie: Are we opening up the whole issue, because I thought we had just decided it.

Mrs. Stoner: There is a motion on the floor.

Mr. Chairman: I could not possibly rule out of order a motion that we do what Mr. Sorbara suggests. All I was trying to do was give the committee what I thought was friendly advice from the chair, that you would be causing more problems than you would be solving.

Mrs. Stoner: Okay, but you already have a motion on the floor to go to estimates. I am saying, for the reasons I just outlined, I think that is inappropriate. I think to go to those hearings is not impossible and does not require House approval, as a whole, but is a decision of the committee.

Mr. Chairman: Can we hear a word from the clerk?

Clerk of the Committee: This committee has authority to sit Monday afternoon, Wednesday afternoon and Thursday afternoon. If this committee wants authority to sit any more than that, it needs an order of the House for Monday morning and it needs an order of the House for Tuesday. You have no authority to sit either Monday morning or Tuesday, and those hearings are on Monday and Tuesday. That is what is required.

Mrs. Stoner: But it is the committee's decision to request that.

Clerk of the Committee: The committee request would go to the House leaders. At the House leaders' meeting, they would determine whether a motion could be put forward for the committee to travel on the morning of the Monday and on the Tuesday, because you have no authority to sit at those times.

Mrs. Stoner: So it would have to go to the House. I appreciate the clarification, but I still think the option is there and that both those cities are nearby and the inconvenience is not that great.

Mr. Dietsch: I guess I am caught up in the same dilemma that some of my other colleagues are caught up in, and that is that I would like to move along with the hearings as much as possible, faced with the time that we have. I would like to ask if it is possible to notify some of the Toronto groups that we have some time available for them to make presentations next week to the committee on Monday afternoon, Wednesday afternoon or Thursday afternoon.

Quite frankly, I do not, from a layman's point of view, understand why the clerk cannot contact some of those Metro people to say: "We have these positions open. We would like you to come before us and make presentations to this committee."

I am not going to support the motion that is on the floor. I have a great fear that it will be perceived that we are hearing estimates when we have the workers' compensation bill before this committee and the wrong message will be transmitted to all those injured workers whom we have just discussed for an hour.

Mr. Chairman: I think we should move on with this. There are two people who want to speak now.

Hon. Mr. Sorbara: Given what you describe as your friendly advice and what you describe as the politics of the situation, I want to withdraw any

suggestion that a suggestion be made to the House leaders to put before the House a motion which would have to be approved by the House: that the people in Hamilton and Oshawa be accommodated on Tuesday, notwithstanding that the House is sitting.

Mr. Mackenzie: I will be equally brief. I can let Mr. Dietsch know that if it were possible to have any of the Toronto groups appear—and I think that might be difficult—that would not be a problem here, if we were able to do that next week. I just simply said that if that could be complied with and if any of the Toronto groups were available, if the clerk can find that out, we would have no particular difficulty with it.

However, I do want to take exception to the suggestion that my colleague Norah Stoner made: that we consider the move to Hamilton. That is my town. I know how much they disagree with it. She is right. There is the odd precedent. But a hard-fought standing rule—and your party, Mr. Chairman, fought it as hard as we did for many years in this House—has been that we do not travel on the road while the House is in session. There is ample and good reason for it, much of which has been given.

I would be much involved in this but I certainly am also interested in either the lottery bill or the aggregate bill or whatever we are into in this House on a Monday. I do not think we should be looking for ways and means to get around what has been a long-standing tradition in this House. There must be exceptional circumstances before we violate the rule of not travelling and taking members away from the House on committee work while the House is in session.

Mr. Chairman: Let us deal with Mrs. Marland's motion. She had to go back into the House, I understand. If Mrs. Marland's motion is carried, that means we deal with the estimates next week. If her motion is defeated, it means that tomorrow we will decide what we do with next week. There is nothing precluding what I believe Mr. Dietsch has suggested: that the clerk phone some of the Toronto groups to see what their schedule would be next week. There is nothing to preclude that from happening.

Mr. Carrothers: If we pass the motion, I do believe we will have precluded that option.

Mr. Chairman: If we pass the motion, that would be precluded, yes.

Does everyone understand Mrs. Marland's motion to have estimates next week?

All those in favour of the motion? All those opposed?

Motion negatived.

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Mr. Chairman: That implies that we will ask the clerk tomorrow to do two things, it seems to me: one, cancel the Hamilton-Oshawa meetings; two, contact the Toronto groups and see if they are prepared to make presentations before the committee next week. Is that clear? Thank you. What a co-operative committee.

We are now ready to proceed with our regularly scheduled business for today, which is dealing with the Ministry of Labour and, in particular, the

office of the worker adviser and the office of the employer adviser. We have with us the minister, of course, and Jason Mandlowitz of the office of the employer adviser and Odoardo Di Santo of the office of the worker adviser.

Mr. Sorbara, do you wish to make any opening comments?

Hon. Mr. Sorbara: Yes. First, I would like to invite Mr. Di Santo and Mr. Mandlowitz to join me and you and all of us at the table and to advise the chairman and members of the committee that the Ministry of Labour is here today to present the briefs of the office of the worker adviser, followed by that of the office of the employer adviser.

Subject to the concurrence of the committee, I will invite questions after each presentation. We have taken some time, interestingly, to discuss scheduling. I hope that we can all have a quick look at the clock and have some sort of tacit agreement to divide the time equally. I understand the presentations are of equal length and I think there will be some questions afterwards.

As members may recall, the offices were established as a result of amendments to the Workers' Compensation Act in 1985. The offices are in fact branches within the Ministry of Labour. Each of the directors, Mr. Di Santo of the office of the worker adviser on my left and Mr. Mandlowitz of the office of the employer adviser on my right, report within the ministry to the executive director of labour programs, Arthur Gladstone, who is with us in the audience today. It may well be that committee members have questions of Mr. Gladstone; I know he would be happy to join us if the committee finds that is necessary.

Each of the director's remarks, I understand, will set out the legislative and budgetary backgrounds of each program among other matters. Without further comment I will ask Mr. Di Santo to begin his presentation.

OFFICE OF THE WORKER ADVISER

Mr. Di Santo: I am pleased to be here today to assist the committee in its consideration of the proposed amendments to the Workers' Compensation Act.

In my presentation I will first outline the history and mandate of the office of the worker adviser and our organization's structure. Next, I will discuss our current workload, including a breakdown of the kinds of cases we are dealing with. I will then present my evaluation of the likely impact of the implementation of Bill 162 on the office of the worker adviser's workload.

The office of the worker adviser serves Ontario's injured workers by advising them of their rights and representing them in their cases. Prior to 1985, as you know, the Workers' Compensation Board provided its own adviser and representational service to injured workers through in-house worker advisers. It was felt by the legislators that a service independent of the board should be set up. The officer of the worker adviser was thus established by the Bill 101 amendments to the Workers' Compensation Act, specifically section 86q of the amended act, which came into force on October 1, 1985.

It is important to note that it was never intended that the office of the worker adviser replace existing adviser and representational services for injured workers, which include members of provincial parliament, unions, legal clinics, lawyers and injured workers' groups. Instead, the office was seen as a supplement to those resources.

Section 86q entrusts the office with a broad mandate, to be available to any person who is or has been a claimant for benefits under the Workers' Compensation Act. This mandate has developed to include five key elements: to advise injured workers of their rights under the Workers' Compensation Act so that they will be able to represent themselves within the workers' compensation system; to represent injured workers at all levels of the Workers' Compensation Board, at the Workers' Compensation Appeals Tribunal, and beyond the tribunal where applicable; to work with labour and injured worker groups, MPPs and other organizations representing injured workers, as an information resource and to support them in their own representation work; to identify operational problems in the workers' compensation system that may require changes to policies and procedures under existing legislation; as part of the Ministry of Labour, to advise the minister regarding workers' compensation legislative initiatives.

As of December 31, 1988, our staff complement was 79, with 12 offices across Ontario: Scarborough, Toronto central, Weston, Hamilton, Ottawa, Windsor, Sault Ste. Marie, Timmins, London, Thunder Bay, Kitchener and Sudbury. We plan to open a new office in the Metropolitan Toronto area early in fiscal 1989-90.

The local offices are administered through four regional advisory units: the central, Toronto-eastern Ontario, Toronto west-Niagara and northern advisory units. In addition, our special services unit does specialized work for the office of the worker adviser in the areas of training, legal research, complex representation, case consultation, policy and publications.

The office of the worker adviser's total budget allotment for fiscal 1988-89 is \$4,753,000, of which \$3,050,000 is allocated to salaries and wages, \$477,000 to employee benefits and \$1,226,000 for other direct operating expenses. Pursuant to section 86q, all office of the worker adviser program expenditures are recoverable from the workers' compensation accident fund.

Since the office of the worker adviser opened its doors in 1985, there has been a great demand for our services. The 1987-88 period alone saw a 30 per cent increase in our caseload over the previous year.

The workers who come to the office for assistance are those who have problems within the workers' compensation system. The problems range from short-term payment delays to long-term entitlement and rehabilitation problems. Our philosophy is, as much as possible, to assist injured workers in dealing with the system themselves, because in many cases they will have a long involvement with the Workers' Compensation Board. There are a substantial number of cases, however, where representation is required. The multilingual capacities of the worker advisers and support staff have been of great importance to our ability to assist workers efficiently and effectively.

The average worker adviser spends from one to two days per week giving summary advice to injured workers or trying to solve the worker's problem by early intervention. Most of the remaining time is spent on representation of workers at the decision review branch or hearing officer levels of the WCB. This includes gathering medical evidence, interviewing witnesses and researching often complex issues of law or medical causation. Advisers also represent workers at the WCAT, where a high level of understanding and advocacy skill is necessary to properly represent the worker. Advisers also engage in training and outreach, to assist unions and MPPs' assistants in particular with their own work on behalf of injured workers. Finally, the advisers prepare policy change recommendations, based on their practical

experience with the system. I use these as a basis of the office of the worker adviser's policy and legislative recommendations.

Our caseload statistics show that as of December 31, 1988, active representation service is being provided to 4,900 injured workers for an average active client load of 100 per worker adviser. In addition to this caseload, 3,500 workers have received summary assistance without being placed on the waiting list. Requests for service vary considerably across the province. The areas of greatest demand are central Toronto, Weston, London and Thunder Bay.

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As you know, our most pressing priority has been the 3,400 workers on the waiting list. Since implementation of our early intervention initiative in 1988, 1,400 of those workers have received assistance with their claims. Other initiatives put in place to deal with this priority are increased file turnover and the move to a system of case prioritization. As members of the committee will know, the office of the worker adviser is also putting extensive resources into external self-help and training materials, and training sessions, to encourage trade unions and MPPs' assistants to continue with their own representation of injured workers. In 1988, we held basic training sessions across Ontario for all interested MPPs' assistants, two advanced sessions for assistants in Toronto plus over 20 sessions for unions.

As a result of these initiatives, we are making progress. Between December 1986 and December 1987, for example, there was a 42 per cent increase in clients waiting for service, which created unacceptable delays for injured workers. Since that time, however, the waiting list has remained stable despite greatly increased demands for service. Coupled with this levelling off in the waiting list is the fact that since the implementation of early intervention, over 41 per cent of the injured workers now on the waiting list are receiving this assistance.

In order to deal with the case inflow, we have developed a system of case selection-prioritization criteria set tentatively for implementation on April 1, 1989. Under the proposed system, all injured workers who contact the office will receive summary advice, and those who are not represented elsewhere will receive early intervention, with the objective of resolving the cases at the earliest time possible. Cases which cannot be solved by early intervention will then be prioritized according to objective case selection criteria regarding urgency, complexity and the nature of the issues involved. For example, highly complex or urgent cases, such as eligibility for survivor's support, will be given immediate representation in the appeal system. The least complex cases will be referred appropriately.

Further provisions of the new system ensure that the existing waiting list will be prioritized to determine whether there are urgent cases which should be given immediate appeal representation.

Although there is no historical reference at this moment, it is projected that with the implementation of the case selection criteria, reduction in the number of representation cases will be possible.

Of course, the addition of a new office in the Metro Toronto area will also reduce the waiting list.

As a further measure, it is our intention to proceed with automating our

case management system. This would increase the efficiency of worker advisers through enhanced support resources.

Finally, an external review of our major program areas is planned for fiscal year 1989-90, in order to improve delivery of services.

To sum up the present case load situation, the combination of the early intervention policy, case selection criteria, the establishment of a new Metro area office and other measures mentioned represent significant steps by the office of the worker adviser to reduce case load backlog and improve service to the injured workers of Ontario.

Because detailed statistics on the makeup of the workload of the office are prepared on an annual basis, I will be using the same information provided to the committee in May 1988. This information was obtained from a computer analysis of the decisions obtained by the office of the worker adviser on behalf of injured workers for the year ending December 31, 1987.

First, in terms of the distribution of our cases at the different levels of the workers' compensation system, 53 per cent of our decisions were obtained from either the operating levels of the WCB or the decision review branch. A further 37 per cent were obtained from the hearing officer of the board and 10 per cent from the Workers' Compensation Appeals Tribunal. This shows the importance of our work at the WCB level, although of course, due to their complexity, the WCAT appeals take a larger share of our resources than the 10 per cent figure might indicate.

In terms of the issues dealt with on behalf of injured workers, a large proportion of our decisions deal with initial issues within the workers' compensation system: 34 per cent with initial entitlement and 33 per cent with temporary total benefits. Other important areas include pension appeals at eight per cent and supplement appeals at 10 per cent. Although vocational rehabilitation appeals accounted for only two per cent of our cases, this figure is probably somewhat misleading because rehabilitation issues arise in both temporary total and pension supplement cases.

In 1987, our success rate, meaning the injured worker's appeal was at least allowed in part, was 60 per cent at the operating and decision review levels, 64 per cent at the hearing officer and 61 per cent at the appeals tribunal. For 1988, we do not have definite data yet but the figures available show that the success rate is estimated at 40 per cent at the operating and review levels, 56 per cent at the hearing officer and 56 per cent at the tribunal.

Now I will talk about the impact of Bill 162 on the workload of the office of the worker adviser. Members of the committee will appreciate that it is difficult to be precise about the impact of Bill 162 on the workload of the office of the worker adviser. What my staff have tried to do is look at the different areas of our operations and the provisions of the bill to give our best estimate of this impact.

A good proportion of the office of the worker adviser's work is in the area of advising injured workers of their rights and assisting them on a short-term basis by way of early intervention. Early intervention includes assisting the worker in writing a letter to the board, calling or writing the board on the worker's behalf, obtaining a supportive medical report on the

worker's case, and/or submitting written arguments to operating level or decision review staff.

In the short term, demand for this type of assistance is expected to increase as existing injured workers who would otherwise not have contacted us will be inquiring regarding Bill 162 entitlements. This will be in addition to workers newly injured under an unfamiliar statutory scheme. Worker advisers each now spend an average of 1.5 days per week on summary advice-early intervention. This would likely increase. This could decrease the average time available for representation cases.

Possible additional problems could result from WCB staff having more complex adjudication problems in the implementation phase of Bill 162. This could lead to greater delays in adjudication by the board, so that injured workers' cases would stay with the office of the worker adviser longer. This in turn could decrease our case opening and closing rate, and thus cause a larger decrease than estimated above in our time and ability to do active representation.

On the other hand, with smooth implementation of Bill 162, and if rehabilitation and reinstatement provisions in particular reduce problems in these areas, there could be less demand for summary advice and early intervention.

Bill 162 introduces new services and entitlements to the workers' compensation system. This includes a new scheme for permanent disability compensation including time limitations; reinstatement provisions; a more complex rehabilitation provision including time limitations; the maintenance of employee benefit contributions for one year; provisions for retirement pensions.

The combination of these new complexities and the continued existence of the pre-Bill 162 system means that the demand by injured workers for summary assistance could permanently increase.

The provisions of the bill could improve the operation of the system. This is particularly so in the areas of rehabilitation and reinstatement, in so far as the new provisions are successful in restoring more people more quickly to work, and thereby assisting workers and reducing demand.

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Other than the decrease in available time due to summary advice-early intervention demands, little effect on our representation capacity is anticipated in the short term because of our case prioritization system and because there will be a time delay until adverse decisions are made and objections get into the appeals system.

It is difficult to estimate the impact of the implementation of Bill 162 on the office of the worker adviser's capacity to provide representation service to injured workers. Factors which could increase the demand are the following:

With Bill 162, there would be three different statutory regimes for compensating injured workers depending on the date of injury: the pre-1985 claims, the claims from 1985 to Bill 162, and the Bill 162 claims themselves.

Bill 162 itself introduces complexity and time limitations to the system

which do not now exist. Of particular note are the complexities of the new system of compensation for impairment and for projected loss of earnings. This would include the new ratings schedule and the resulting need for more precise medical information from the worker's representative, the detailed criteria for projecting wage loss, the early shift from temporary benefits to permanent benefits compared to the present system, and the interrelationship between the impairment and wage-loss determinations. The combination of these elements would require a higher degree of precision and evidence gathering than the present system. Limitation periods include those for impairment appeals, projected loss of earnings reviews, rehabilitation services, reinstatement and some forms of supplemental benefits.

The combination of these factors could reduce the capacity and willingness of external workers' representatives, for example, MPPs and trade unions, to represent injured workers and correspondingly increase demand for worker adviser services.

Factors which could decrease demand for representation service include the following:

Rehabilitation provisions calling for early intervention and guaranteed assessments could assist injured workers and reduce problems with benefits.

The reinstatement provisions could result in more workers returning to work and thus reduce the number of workers claiming rehabilitation-related benefits.

The projected loss of earnings benefits might reduce the number of workers who now encounter problems with pension supplements.

If an understandable ratings schedule usable by the treating physicians is introduced, appeals of impairment ratings could be reduced.

The workload of the office of the worker adviser may increase or decrease depending upon the capacity and simplicity of the regulations which the board must prepare for the government.

As I mentioned earlier, the office of the worker adviser carries on extensive training and outreach activities across the province. With Bill 162, we would anticipate an immediate increase in demands for training, because these key external representatives of injured workers now identify the office of the worker adviser as a valuable source of training. Even under the existing system, the majority of groups we have trained have requested follow-up sessions in either the near or medium term.

In addition to the training sessions themselves, the passage of Bill 162 would necessitate the preparation of new training materials, and in particular the revision of our widely used Caseworkers' Guide to Workers' Compensation. Other materials to be revised or written include the self-help information sheets for injured workers and the advanced materials we have prepared on a number of WCAT-related topics.

It is important to note that the Workers' Compensation Board bears a heavy responsibility in ensuring that the new system is responsible, accessible and understandable. They must develop communications materials that are clear and direct in assisting the workers to understand their rights and how the new system will help them.

Depending on the general impact of Bill 162, there could be an increase or decrease in the long-term demand for training services. If the system ultimately operates in a simpler and more understandable way and is more accessible to injured workers, there will be less need for training. If there is greater complexity and difficulty in workers' compensation, there would be more demand for training.

It is clear that the resources necessary for maintaining training and self-help written materials would increase as materials on the existing system would have to be kept up to date for many years into the future, along with materials on the new system.

In conclusion, I wish to emphasize that it is difficult to determine the precise magnitude of the impact of Bill 162 on the office of the worker adviser. It will be necessary to get a sense of how the new legislation is administered to have an idea of what additional resources, if any, might be required.

The communications effort that is mounted by the board to explain the new provisions and make them understandable and accessible to claimants will also play a very significant role in the effective implementation of the bill.

This completes my presentation. I would be glad to field any questions the committee might have.

Mr. Chairman: Did the committee agree in my absence to hear both presentations or do you want to deal with each one at a time?

Mr. Carrothers: We did not actually make an agreement. I wonder if it would not be appropriate to go through both presentations and then go back.

OFFICE OF THE EMPLOYER ADVISER

Mr. Mandlowitz: My presentation is divided into four parts. The first part is on mandate, structure and organization; the second part on service to employers; the third part on workload and case data, and the fourth part on the impact of Bill 162.

The office of the employer adviser was created effective October 1985 by an amendment to the Workers' Compensation Act. The OEA is a free service and a branch of the Ontario Ministry of Labour whose budget is fully charged back to the WCB accident fund. The accident fund is comprised of employer assessment contributions only. No consolidated revenue contributions have historically been made for the purpose of providing benefits to injured workers.

The legislative authority of the OEA resides in section 86r of the Workers' Compensation Act. It is reproduced on page 1 for your information.

The program objectives of the OEA are: (1) to ensure the workers' compensation system in Ontario provides fairness and is sensitive to employer requirements; (2) to provide a voice for employers within the WCB and Workers' Compensation Appeals Tribunal claims review and appeal process; (3) to acquaint employers with the full range of WCB and WCAT practices; (4) to provide employers with direct representational assistance on WCB and WCAT issues and at hearings; (5) to communicate employer workers' compensation concerns to legislative and administrative authorities; (6) to educate employers on the full range of the workers' compensation statute, regulations,

policy and procedures to facilitate employers helping themselves in dealings with the WCB and WCAT.

Objectives are met by the OEA providing employers of all sizes across the province with workers' compensation advisory services, advising on policy issues concerning the views of employers and initiating a variety of educational programs to bring technical issues before employers.

At its inception in October 1985, the OEA was located in Toronto with a staff of eight, of which four were employer advisers, and a half-year operating budget of \$200,000. An annual budget of \$501,300 was approved for the OEA for the fiscal year 1986-87. During the 1986-87 fiscal year, the budget was increased by \$520,700, including \$250,500 in salaries and wages for 11 permanent staff and four temporary staff. This brought the total OEA staff to 23, of which 11 were employer advisers. New offices were established in Windsor, Kitchener, Sudbury and Ottawa. For the 1987-88 fiscal year, additional resources were approved for the OEA, bringing staff size to 27, of which 15 were employer advisers, and facilitating a new Hamilton office location.

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By year-end 1987, the OEA structure appears as per page 3, indicating 27 total positions, with three-person offices in each of the five offices outside Toronto and 12 staff in Toronto: three management, five employer advisers, three support staff and one policy analyst.

The total budget for 1987-88 was \$1,547,000. The OEA, in preparing estimates for 1988-89, carefully assessed future needs and analysed pressure points. The OEA in its strategic planning has considered alternative methods of servicing clients. While case management will be assisted in part by OEA automation and more specialized roles such as a commitment of one person-year to a policy function, service to clients must remain direct, utilizing a local office network staffed by advisers experienced in workers' compensation and supported by clerical personnel. The total budget for 1988-89 was \$1,682,000, fully charged back to the Workers' Compensation Board accident fund.

Service demand pressure points from areas where no OEA office currently exists are London and Mississauga, both contributing significantly to overall OEA client demands.

OEA service demand has increased dramatically since its inception. In the period October 1985 to March 1986, the OEA serviced 750 employers. In its first full year of service, 1986-87, the OEA served 3,960 employers. In fiscal year 1987-88, the OEA serviced approximately 8,000 employer inquiries.

For the 1988-89 fiscal year, a new data collection approach was implemented redefining "contact" to mean a new piece of business. For the 1988-89 year to date, April to the end of December, the OEA will have serviced over 4,200 new employers or approximately 6,000 for the full year. For the same time period the OEA will have opened 1,250 files or approximately 1,700 for the full year. Each employer adviser at the OEA will carry about 110 active files at any point in time. Of these, 75 per cent involve claim entitlement issues and 25 per cent assessment issues.

The nature of OEA service includes providing information on general WCB policy and procedures; providing interpretations of the Workers' Compensation Act and regulations; helping to prepare appeals for the WCB or Workers'

Compensation Appeals Tribunal; appearing with employers as their representative at WCB and WCAT hearings; advising employers on assessment, reclassification and collection issues; referring employers to existing services such as safety associations for occupational health and safety assistance.

The OEA has consistently focused on one objective: "to help employers help themselves on workers' compensation." This is reflected in greater emphasis over time on scrutinizing criteria for file intake and in providing employers with assistance to facilitate their initiation of appeals or WCB inquiries, with the OEA serving as a resource.

The position of the OEA is that all employers making contact will receive summary advice. If the complexity of a case cannot be adequately addressed this way, an employer adviser has the discretion to open a case file. Considerations for OEA involvement would include the size and experience of the employer, complexity of the issue or issues under dispute and the principles inherent in the case such as a test case before WCAT. The office of the employer adviser has also established conflict-of-interest guidelines governing representation in multiple-employer situations.

As workers' compensation cases become more complex and move to WCAT, OEA staff have increased their representational role and attended more hearings with employers. Whereas about 170 employers were represented by OEA staff at hearings in 1987-88, about 240 will be represented in 1988-89.

A principal vehicle for providing employers with the resources to petition the WCB on their own has been a series of Ontario-wide seminars which focus both on fundamentals and on complex issues. OEA publications help identify these issues further.

In an effort to assess both the level of current service to employers and future needs, the OEA contracted with Market Facts of Canada to study the matter and report findings. Some of the key results are as follows: the incidence of general awareness of any Ontario government office assisting employers with Workers' Compensation Board issues is 16 per cent; the level of awareness among eligible employers in Ontario is 13 per cent, with the highest recognition being in the southwestern Ontario area, focused around our Windsor office, northern Ontario and the Hamilton-Niagara area. The lowest awareness factor was in southwestern Ontario, focused in the Kitchener-London area.

Subgroups such as the transportation sector and firms with more than 100 employees are more aware of the OEA than of government offices in general. Respondents who contacted the OEA were generally very positive in their overall opinion of service provide. Almost all respondents stated they would use the OEA again if the need arose. The key conclusion from the study was that if OEA awareness increased, there would be a dramatic increase in usage, particularly from the regions of Hamilton-Niagara and southwestern Ontario, in the Kitchener-London area. We are currently reviewing the study to refine our service delivery approach.

Matters of policy at the OEA fall to management and a policy analyst. Matters of client advice and counsel fall to employer advisers. The provision of client service is labour intensive, involving one-on-one counselling as well as direct visits to a workplace to consult with a client or to interview witnesses and prepare a case prior to a hearing.

Workload per adviser is demanding and high. Toronto employer advisers,

for example, are averaging 350 new contacts, 55 files opened in 1988-89—to be added to those which were previously in existence with those advisers—and 45 employer meetings for the first nine months of the year. In this time frame, each adviser will have saved employers over \$1 million. Workloads outside Toronto are comparable.

All OEA offices are currently running with no backlog and are able to schedule hearing representations into April with no time conflicts. OEA data indicate case types as follows: 71.4 per cent of total cases had to do with claims; 22.9 per cent to do with information solicited by clients on the act—this is the pre-Bill 162 act; 17.1 per cent of the workload has to do with advising employers on assessment matters; another 17.1 per cent on costs, and 11.4 per cent on other matters. The total will exceed 100 per cent, as respondents have been able to provide a multiple reply to these kinds of needs.

Where the OEA has successfully represented an employer, its activity can be categorized as follows: 36.5 per cent of successes have to do with obtaining relief or increasing relief for employers under the second injury and enhancement fund; 29 per cent involve reducing or reversing benefits; 22.6 per cent have to do with reducing costs, including waiving penalties; 11.9 per cent of the successes would involve having the board waive double assessments.

Of particular significance is the historical success rate of employer advisers representing employers at the WCAT. A review of all of WCAT significant decisions indicates that the OEA has represented about nine per cent of employers appearing before a tribunal panel since October 1985 with a 60 per cent success rate.

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The final section has to do with the impact of Bill 162. In the short term, the impact of amendments to the Workers' Compensation Act proposed by Bill 162 are currently under review by us. Some expected impacts are: (a) increased incoming contacts from current and new clients for explanatory information; (b) questions regarding the technical and new obligations on employers, including their role in vocational rehabilitation, maintenance of benefits and reinstatement; (c) clients seeking definitive rulings on reinstatement, including status—are they exempt or not?—and the need to create an alternative or suitable job; (d) client demand for information on the Human Rights Code provisions to do with accommodation and undue hardship; and (e) technical assistance and representation in new areas such as noneconomic loss, wage loss and reinstatement before the WCAT.

The full extent of the impact of Bill 162 on the OEA will flow from the regulations prepared by the WCB subsequent to Bill 162 being passed into law and then WCAT interpretation of the Bill 162 amendments. The provisions of Bill 162 are complex and require sophisticated communication to ensure they are properly and well understood. Staff at the OEA and the employer-client group must both be clear on the meaning and application of the legislative amendments. To do this, the WCB must prepare workable regulations, provide information to ensure they are understood and communicate in an effective way with stakeholders in the workers' compensation system.

OEA staff will have to enhance their knowledge and understanding of workers' compensation policy and practices, which will develop to reflect the increased scope of the legislation. In the meantime, the OEA will: (a) initiate OEA staff training on issues like vocational rehabilitation, return to work, pensions policy and so on—this training would be co-ordinated

internally but may use outside resources; (b) establish contact persons in the public sector for information and client referral—OEA is currently reviewing with the ministry's handicapped employment program such a proposal; (c) provide OEA advisory staff with a series of questions and answers to issues and/or questions raised by Bill 162 for use with client inquiries; and (d) initiate a Bill 162 interpretation component for future OEA client workshops, using external expertise as required.

At this point it is premature to project specific case load implications. However, one can safely predict that demand will increase directly proportionate to the flow of new WCB and WCAT appeals. Employers are uneasy over prospects of new, significant changes in the administration of workers' compensation, including WCB formulation of the new set of regulations. This situation should be addressed by the WCB making available information and service to clarify what will be expected of employers as compliance criteria. It will also be important for the WCB to involve employer and worker groups in developing new regulations.

In projecting long-term impacts, I think one can learn from the legislative and adjudicative environment after the enactment of Bill 101. That process, which included the establishment of new structures such as the office of the employer adviser and the office of the worker adviser demonstrated that employers required significant time—three years—to synthesize the new approach in the act.

Similarly, the adjudicative process, including WCAT, took time to become routinized. Many employers, however, believe that after three years the rules of adjudication remain unclear. The situation may be affected as the WCB requires time to fully implement the changes proposed by Bill 162.

For the OEA, in the long run one can envisage various scenarios. If the effect of Bill 162 is to return injured workers to employment and to intervene expeditiously in worker vocational rehabilitation, then demand at the OEA will level or may decrease. However, this would assume a broad communications approach by the WCB to acquaint employers with their legal requirements and obligations. This would also be based on an efficient and effective WCB process of formulating workable regulations which were binding on the WCAT. Such a scenario would allow the OEA to operate within current staff levels and within current budget allocation.

Another scenario would involve a continued increase in appeals at all levels in workers' compensation. This would include appeals for noneconomic loss, wage loss, reinstatement, rehabilitation and the like. Such a scenario would increase OEA direct representation in new functional areas. Efficiency and effectiveness would depend on available training of OEA staff and implementation of regulations by the board. Such a scenario would necessitate a review of appropriate staff levels, interaction with other delivery programs in the Ministry of Labour and the appropriate budgetary situation.

Hon. Mr. Sorbara: There are presentations by both the director of the office of the worker adviser and the office of the employer adviser. We are open to your questions.

Mr. Chairman: I have a reminder to members that there is a vote at 5:45 p.m., so we should wrap up our deliberations then.

Just before we get into it, Mr. Mandlowitz, at the end of your presentation you talk about the possible need for more complement if things

get more complex. I assume it is the same process for Mr. Di Santo and for you. If you do find out there are problems and the case backlog is building, to whom do you go? Do you go to the minister for increased money?

Hon. Mr. Sorbara: The answer to that question is yes. There is a unique funding arrangement, though. Although the component in each of the offices forms part of the ministry component and they operate within the structure of the component, the structure of the ministry and the level of funding for each office are part of the ministry estimates and, in fact, were considered very recently by another committee. There is a transfer from the Workers' Compensation Board in respect of those funds.

Mr. Chairman: I understand that. What is the process now, though? If Mr. Di Santo, who talks about his backlog, needs more help, how do you make a judgement in consultation with the board? Do you just make a determination? Do you sit down with the chairman of the WCB? How do you do that?

Hon. Mr. Sorbara: Much as determinations on budgeting in any area are made, through the estimates process; not the hearing of estimates, but the budgetary process. The ministry's finance and administration branch has to bring together all of those requests and make submissions to Management Board of Cabinet and the Treasurer (Mr. R. F. Nixon).

Mr. Chairman: No, but you are getting this fed back to you from the WCB. That is the difference, is it not?

Hon. Mr. Sorbara: Yes. Notwithstanding that, the determination is made within overall government financing. Once that determination is made, a bill is submitted to the WCB for whatever decisions the government has made. In other words, just to answer your question more directly, those budgets are not set independently either by the offices or by the ministry in a negotiation process with the board.

The board may well balk if the government approves a dramatic expansion in the order of 100 per cent or 200 per cent. There is a working relationship, but there is not a submission made or a direct input from the board as to the determination of those budgets. They are set in government and then funded by the board through the assessment and ultimately become part of the WCB's budget.

Miss Martel: I have a question for both Mr. Di Santo and Mr. Mandlowitz concerning Bill 162. I would like to know what input either yourselves directly or your offices had in the drafting of Bill 162.

Hon. Mr. Sorbara: Before each of the directors answers that question, Bill 162 represents the policy of the government, obviously. In each policy that we consider, whether it be health and safety, employment standards, contracting out or wage protection, we have an arrangement within the ministry, within the policy and programs branch; there is a specific policy branch that undertakes the administrative review and the crafting of policy, obviously directly in conjunction with me and my office.

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There are mechanisms within the operation of that policy branch to incorporate virtually all areas of the ministry. For example, when we did the policy development work on Bill 208, the Occupational Health and Safety Statute Law Amendment Act, there was a good deal of input from really all over the ministry. That is the way the ministry is organized.

In the development of Bill 162, an Act to amend the Workers' Compensation Act, the information, advice and experience of the office of the worker adviser and the office of the employer adviser were taken into consideration, but once all of those determinations and deliberations are completed, the bill, the initiative or the program becomes the policy of the ministry.

Miss Martel: I know you told me that the information, advice and experience in both offices were taken into consideration. On that basis, let me ask you both what information, advice or experience you contributed to the drafting of Bill 162.

Mr. Mandlowitz: I will kick off. I think you have to appreciate the history of how we got to where we are at this table.

Miss Martel: I do.

Mr. Mandlowitz: If you take it back quite a while, you will recall that there were consultation documents broadly distributed around Ontario, Weiler's third report and I believe another document. From our perspective, those documents were used to initiate a consultation process with employers and the focus there was to get their input and their reaction to those documents.

We held eight formal consultation sessions, which touched about 125 employers during May and June. We received some very specific responses to those documents and some general philosophical responses to those documents. The employer reaction was brought to the attention of the policy branch. At the time, we reported to the assistant deputy minister of labour, policy and programs, Peter Sadlier-Brown, and discussions were held with him.

I am sure that information was brought to the minister's attention through the administrative system. In other words, we had the basic documents and the basic questions with which we could go to the client group. That was very helpful.

To bring it back to the Bill 162 process specifically, clearly the direction was established by the government. The issues that we were able to consider within Bill 162 were within the context of design features of the bill. Much of the input on that score came from the consultations.

In terms of actually drafting in the sense of legislative drafting, we had no role; nor is that our role.

Hon. Mr. Sorbara: I just want to interrupt Mr. Mandlowitz somewhat. He may want to continue, but I want to make it clear that as minister responsible for the ministry, I am not going to allow a cross-examination of officials within the ministry during these hearings for the purposes of determining whether or not they personally feel like they were sufficiently consulted. That would be inappropriate on any bill with any official within any ministry.

With respect to what Mr. Mandlowitz has said so far, I confirm that is the case. In addition, I have obviously had informal discussions with both of the directors during the crafting of the legislation. Perhaps Mr. Di Santo—

Mr. Di Santo: Mr. Chairman, the minister basically answered your question. We were asked to give our contribution and we wrote a very extensive

brief that we gave to the minister on each aspect of Bill 162. That was part of the process.

Miss Martel: Was this before or after you saw the bill, Mr. Di Santo?

Mr. Di Santo: We participated in discussions before and during the drafting of the bill.

Miss Martel: Were those done with a client group as well, as in the case of Mr. Mandlowitz's client group?

Mr. Di Santo: Pardon?

Miss Martel: Was that done in the context of talking to client groups as well, as it appears was done in the case of the office of the employer adviser?

Mr. Di Santo: As the member can understand, part of our mandate is to have contacts with the groups and the organizations which work in the field of compensation and represent workers: legal aid clinics and trade unions. We have been talking with them about Bill 162. We had their reactions and their critique to the bill and we made the minister aware of them.

Hon. Mr. Sorbara: To get to the point that Miss Martel probably wants ultimately to get to, perhaps the bill was not vetted, once crafted or in draft form, through either of the offices to determine its acceptability among client groups. What was done, rather, was that ongoing consultations were had through the official within the ministry under whom both offices operate, in a consultative way, much as policy would be formulated in any other area.

It would be no surprise that what was transmitted through the office of the worker adviser, from its client groups, were concerns about what kind of dual award system the government was contemplating. We have been on record fairly long that we were going to bring forth a piece of legislation incorporating a dual award system. Historically, there has been some concern among the client groups that Mr. Di Santo's office generally works with.

On the other hand, as you might expect, the sense from employers, as transmitted through the office of the employer adviser was, obviously, concern about what kind of impact a right of reinstatement might have in the province and how this was going to be tolerated—information incorporated into the workplace. There was some very dramatic concern, I might add, about raising the ceiling, some concern about the additional costs that might be encountered by the system in the event that vocational rehabilitation was a statutory requirement on the board, and those sorts of things. That is typically what is heard now from constituencies within the province about the bill generally.

Miss Martel: If I might continue, just picking up from these concerns of the client groups, I am wondering if I can ask Mr. Mandlowitz, then, if his clients, as they came to talk to him about this bill, were concerned about the fact that the bill is supposed to be cost neutral or revenue neutral while at the same time the Workers' Compensation Board—or at least so the minister has said—has committed some \$40 million to new rehabilitation incentives. I am wondering if your client group is not a little concerned about how those two square off.

Mr. Mandlowitz: I think one of the things you have to understand is

that generally employers have not criticized the administrative costs of the WCB. They have criticized other areas of adjudication and communications at the WCB. In some ways, while cost-effectiveness is a critical perspective that you would anticipate any business or business group would bring to a review of the WCB, what makes workers' compensation unique is that one has to balance that with a service-effectiveness kind of measurement. That is why so many employers are supportive of WCB decentralization; it is from that perspective.

Similarly, employers will view any measure that has the effect of bringing workers back to work as being cost-effective to the system and service-effective to the injured worker, if I can put it in those terms. So I do not see those to necessarily be problems.

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Hon. Mr. Sorbara: If I could just add to that, Mr. Chairman: When I described the policy-making process, I would not want to have left you with the misimpression that in developing our policies we asked either Odoardo or Jason to do some sampling of the extent to which this would fly within the employer community or within the worker community. Rather, in the formulation of that policy we rely on their expertise, having been responsible for two new and very high-profile and important branches of the Ministry of Labour related directly to the workers' compensation system.

So, it is no surprise that in doing that Odoardo Di Santo would say to me that there will be concern among some client groups about a dual award system, particularly if it is clearly not designed to ensure that it will be implemented fairly and not arbitrarily. Similarly, it would be no surprise to you, Mr. Chairman, that Jason Mandlowitz would say to me that "employers will, if my experience is correct, have some concern about the raising of the ceiling of the additional costs that might be borne through additional administrative expenses like vocational rehabilitation. But if that is done right, my experience is that they will find that is ultimately better for the system."

But we did not take elements or sections or parts of the bill and hand them over and say, "Go and test market that among your client groups." These two offices have a very specific and clear mandate, and I think each of the directors talked about those mandates. It is overwhelmingly a service delivery mandate and that is basically what they do. But as they deliver that service, they become familiar with the system and can assist greatly—and they have, frankly—in the policymaking part of the Ministry of Labour as we shape initiatives.

Miss Martel: I have a supplementary, Mr. Chairman. I am not so concerned about the mandates of both offices as I am about hearing what they think the impact of this is going to be on their individual client groups. The bill has been out in the public since June 20, 1988. I would think that both of them have been widely canvassed by client groups on both sides. They respect the clients they represent and those clients have had something definite to say about this bill.

I am interested in finding out what the clients have to say about particular provisions included in this bill. In particular, for example, I would like to hear from Mr. Di Santo what the clients who come through his door have to say about the rehabilitation provisions in the bill, especially in light of the fact that the board is not obliged to provide those services. He would certainly be dealing with a number of clients who have been cut off

because they were not co-operating with the board, and they are going to be dramatically affected under this.

Hon. Mr. Sorbara: But I think the answer to that question must come from me, and that is that the information that he garners about what his client groups think about the bill is information that he transmits to me as the minister in the Ministry of Labour—

Mr. Dietsch: I thought that is why we are holding public hearings.

Hon. Mr. Sorbara: —so that I can carry on, and similarly with Jason Mandlowitz.

But I will tell you what the reaction is: There is concern that the dual award system be one that operates to respond to the real individual needs of individual workers. I have met with some of those client groups and they have transmitted information to their local worker adviser, if they are dealing with one. Particularly in the first while, they were seriously concerned that rehabilitation—that is the item you mentioned—was going to be restricted to one year or 18 months. I had a challenge on my hands correcting that message. That was not the intention of the bill.

In reinstatement, there was from the client group of the office of the worker adviser a variety of responses and some concern as to how that would overlay on collective agreements. Frankly, as we proceed with these hearings, I anticipate hearing more of that. Worker representatives and the client group generally are enthusiastic about reinstatement rights but they have some concern about how those are going to operate.

If I might just talk about the client group served by the office of the employer adviser, there was serious concern, particularly among members of the construction industry and the mining industry, about the impact on assessments of raising the ceiling.

The reason is simple. Those are high-wage industries. There are many miners who earn about \$35,000. We are moving the ceiling up, in a sense, to insure the rest of the wage or pretty darn near all of it. There were serious concern expressed, I think probably through Mr. Mandlowitz's office: I think he has transmitted that to me, without breaching the confidentiality of how a ministry works. In the construction industry as well, where wages are significantly higher than the average industrial wage, there was some concern that this would be very expensive.

There is concern as well on that score on the extension of benefits from the employers' side, that it was undue interference, if you like, in the employment contract between the employer and the worker. I have heard that on a number of occasions elsewhere, as well.

That is, at least as best I can remember it, the summary of the kinds of advice that I was receiving and the ministry was receiving through these two branches of the ministry.

Miss Martel: I think you have left out a couple of things.

Mr. Chairman: Excuse me, Miss Martel, I do not want to cut you off but we do want to give Mr. Tatham a chance to get on. We will let him speak and we will come back to you if there is time.

Mr. Tatham: First of all, I notice on page 9 of Mr. DiSanto's story

that the success rate went down, from 60 per cent to 40 per cent, from 64 per cent to 56 per cent and from 61 per cent to 56 per cent. What was the reason for that, sir?

Mr. Di Santo: On the operating levels of the Workers' Compensation Board, we noticed in 1980 that there is a trend to reiterate the previous decision without many changes, but at the hearings office at the tribunal level, the figures are almost like the 1987 figures, with little change.

Mr. Tatham: Were the numbers down quite considerably, though?

Mr. Di Santo: Slightly, from 61 per cent to 56 per cent.

Hon. Mr. Sorbara: I want to tell the member for Oxford that any lawyer who has a 50 per cent success rate feels like he is doing a heck of a good job.

Mr. Tatham: Are there operations like this in other provinces, the office of worker adviser and the office of the employer adviser?

Hon. Mr. Sorbara: That is a question I cannot answer, but probably these gentlemen can.

Mr. Tatham: In Saskatchewan?

Mr. Di Santo: Yes, in Saskatchewan.

Mr. Tatham: Did you check with Saskatchewan as far as the impact of Bill 162 is concerned?

Mr. Di Santo: No, we did not, quite frankly. We have done a study of the Saskatchewan bill because they have a dual award system, but we have not contacted them.

Mr. Tatham: That information might be helpful in order to see what their offices out there have done. They have been doing it for 10 years.

Hon. Mr. Sorbara: That is a good point, really. Frankly, I cannot tell you what relationship exists between other provinces which have similar operations and these offices, but I can tell you that these offices are new creatures in government and the startup period has been a very substantial challenge for each office, so I would suspect that they have not had the luxury of a lot of interprovincial conferences to meet with their colleagues to discuss common problems, particularly on Odoardo Di Santo's side, because it is a different operation dealing with individual clients and sometimes very protracted problems. Remember that the WCB has 500,000 claims a year, so it would be a very substantial case load there. The numbers are different on the employer's side.

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Mr. Tatham: All right. I appreciate what you are saying, but if somebody is doing it someplace else, it is always good to see what the other fellow is doing.

Hon. Mr. Sorbara: No doubt about it, yes.

Miss Martel: Just in asking a new question and responding partly to

Mr. Dietsch, these are public hearings, and we should have the right to ask both of the representatives involved exactly how they feel about this bill. It became very evident to me with the first answer that they were not going to be allowed to say what they think of this bill and they had no input into this bill. If you do not think that is a big farce and this whole exercise is rather useless, at least here today, then I think you are going to be sadly mistaken.

Let me go back to the minister, since the other two gentlemen cannot answer.

Mr. Dietsch: Oh, I thought you wanted to ask me a question.

Miss Martel: Can I ask the minister about some other concerns with Bill 162 which he did not mention when he was talking about some of the concerns that client groups of both offices were bringing to him?

I would like to talk about the concern that rehabilitation is, in fact, not an obligation on the employer to provide or about the fact that reinstatement, for example, excludes about 25 per cent of the workforce before we even start. It excludes all those people who have not worked more than one year with the employer and it excludes any other class of people in the future that the board wants to knock out.

I want to ask about the dual award system, where injured workers can be reassessed only twice in the whole course of their lifetime, which is a terrible change from what we have now. There is no doctor in the world who is going to be able to determine significant deterioration over the course of a lifetime. There are concerns that deeming and phantom jobs are a big part of the dual award system. We saw that happen in Saskatchewan and the system was condemned in Saskatchewan by a legislative review committee in 1986.

Maybe the minister can talk to me about some of those concerns, which I am sure were brought by both of the client groups and have not been adequately addressed.

Hon. Mr. Sorbara: I would encourage Miss Martel to have a careful look at the Saskatchewan review of its system and the recently published analysis of the worker compensation system in Manitoba.

I want to correct the record. Actually, I want to correct her record, Mr. Chairman. Both offices had a great deal of input into the crafting of this legislation. What I did say is that I would find it entirely appropriate under any circumstances to have ministry officials cross-examined in a committee hearing as to their personal views on legislation. There are certainly issues that, had he been writing the bill, Mr. Mandlowitz would have had differently, or had Mr. Di Santo been writing the bill, he would have had differently.

But I want to tell you that when a committee is considering a bill, it is considering the position of the government and the ministry on the bill. When this or another committee brings forward Bill 208 for hearings and consideration and clause-by-clause discussion, there will be a number of directors of, for example, the industrial health and safety branch, the construction health and safety branch, the mining health and safety branch and others who will be part and parcel of the delivery of the crafting in terms of policy of that legislation and responsible for delivering it.

At that time—I just want to put you on notice—I would find it

intolerable for a member of a committee to ask one of those officials in the ministry what his personal view is and how much he liked the bill. That would not be—

Mr. Chairman: The committee will protect the public service. You need not worry about that.

The bells are ringing now. I would like to thank Mr. Mandlowitz and Mr. Di Santo for appearing today and thank the committee for its co-operation in a difficult discussion.

Tomorrow the president of the Workers' Compensation Board will be before the committee, so we look forward to his presentation.

The committee adjourned at 5:45 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

THURSDAY, FEBRUARY 16, 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr. Brown

Kanter, Ron (St. Andrew-St. Patrick L) for Mr. Black

Martel, Shelley (Sudbury East NDP) for Mrs. Grier

Mackenzie, Bob (Hamilton East NDP) for Mr. Wildman

Miller, Gordon I. (Norfolk L) for Mr. McGuigan

Clerk: Mellor, Lynn

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Labour:

Sorbara, Hon. Gregory S., Minister of Labour (York Centre L)

Sullivan, Barbara (Mrs.), Parliamentary Assistant to the Minister of Labour
(Halton Centre L)

From the Workers' Compensation Board:

Elgie, Dr. Robert G., Chairman

Wolfson, Dr. Alan D., Vice-Chairman of Administration and President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, February 16, 1989

The committee met at 3:32 p.m. in room 151.

ORGANIZATION

Mr. Chairman: The standing committee on resources development will come to order as we continue our deliberations on Bill 162, An Act to amend the Workers' Compensation Board.

When we adjourned yesterday, there was a matter left with the clerk of the committee. That matter was to determine, in view of the fact the House will be sitting next week and it had been anticipated earlier it would not, whether groups from Toronto that had been scheduled to appear later could shift their schedules to appear before this committee next week during its regularly scheduled hearings. That was what was requested of the clerk. I think it appropriate to ask the clerk to report on her efforts in phoning the groups that had been scheduled later on to see if they could make appearance before the committee next week. Is that clear? I will ask Lynn Mellor to report to the committee on her efforts.

Clerk of the Committee: I called everyone who was to appear either February 20, 21 or 22. There were a variety of different reasons, but in every case except one they were unable to change their schedules.

Mr. Chairman: That means we cannot really deal with the Toronto groups next week. To be fair, it was because of the short notice. I do not think we should condemn them for that. It means that if the committee wants to meet next week, we could back to Mrs. Marland's motion which was defeated, that estimates be dealt with next week.

Lynn has phoned the House leader's office on that as well. The only ministry prepared to continue its estimates next week would be the Ministry of Transportation, but not until Wednesday. Nobody is prepared at this point to carry on with its estimates on Monday, again for understandable reasons, that they have scheduled other plans.

What are the wishes of the committee? You have a choice here. You can accept the fact that we are not going to hear Workers' Compensation Board submissions next week because of the shortness of notice and simply not have the committee meet, or we can try to meet and have the estimates debates go on that had originally been scheduled earlier in January and February.

Mr. Dietsch: I wonder also what the response was of the groups that were cancelled, the Oshawa and Hamilton groups.

Clerk of the Committee: I did not cancel anyone. I postponed. I assured them they would not lose their spots, either from Hamilton or Oshawa, and that they would be rescheduled whenever the committee members determined they would be able to go to Hamilton or Oshawa. I did not cancel anyone. I was very clear on that so they all understood they were not losing their spots.

Mr. Dietsch: I appreciate that clarification because it is important. I used the word "cancel" on purpose so we would make it very clear on the record that in fact they are going to be able to come before us.

I see us having a couple of alternatives in dealing with this committee's business next week. Looking at which groups might come before us, perhaps some of those groups postponed from hearings next week could. Perhaps we could move that one Toronto group on to the agenda.

I am looking at a very sincere need to hear as many people as we possibly can during these types of sittings. I feel it would be advantageous if we looked at a number of options, one option being to call back the individuals, for example in the Oshawa group, that can make presentations before us and ask if they could come to Toronto to make their presentation. We are not talking about a great distance. Or we could give an opportunity to some of the Hamilton individuals who would want to come to Toronto to make their presentations.

In addition to that, we entered into a substantial amount of conversation yesterday with regard to wanting to hear as many people as possible. It seems to me there are groups on a waiting list in both of those areas. We could ask them if they would be prepared to come to Toronto to present to the committee.

Mr. Chairman: If that is what the committee wishes, that is what we will do, but I would caution the committee that distance is not the problem because the groups right in Toronto were not prepared to do it. What would be wiser, I think, would be to forget about next week in terms of presentations. The time notice is simply too short; I do not think they are prepared to do it. If the committee wishes, of course we can phone them, but I think it is not a very realistic aspiration.

Since the House will almost certainly be sitting the following week of February 27, I think it would be a more realistic attempt to try to schedule groups that week after question period, if that is the wish of the committee, rather than this week coming up. It is terribly short notice.

Mrs. Marland: I hate to repeat everything I said yesterday about conducting hearings while the House is sitting, but I know the Progressive Conservative members are quite sincere and committed about the process of public hearings on government legislation. We support the intent of the committee sitting. Having invited these groups to make submissions and presentations to the committee, we want to be able to do that.

We were scheduled to do that. What has happened is that the Liberal government, which agreed we would come back this session following Christmas to deal with the Sunday shopping legislation, has now decided we will continue dealing with other business. Every day we have additional bills presented in the House. We are in the process of mistreating a lot of groups around this province by having to change and cancel and postpone schedules.

There is no way a caucus the size of ours can do a job representing the people who elect us by being in the Legislature and speaking on the government legislation being processed through the House, and being here and doing a conscientious job of listening to depositions and people who come to this committee stating their concerns on or support for Bill 162.

1540

Having said all that yesterday, I still feel that to come in here today, we have to be realistic about these groups we are now considering asking if they would like to come next week or the week after. If they are invited to come and we say we will all be here to hear them, then apart from the time when there are votes I will acknowledge that if we are going to hear them, we have to hear them in this facility so that we are close for votes on government legislation that is ongoing, because that is the decision of the government at the moment, that we do continue to sit.

Of course, the traditional mode of operating for the Legislature has been that the House rises and then the committees sit and get on with whatever legislation needs public hearings. I do not believe in having half-hearted public hearings. We either do it properly where all parties in this Legislature have an opportunity to be witnesses to what is presented to the committee, or we postpone it until the time that works out.

Quite frankly, with such an imbalance, with 94 government members versus our 17 and the New Democratic Party's 19, it is just a physical impossibility to be in two or three different places in this Legislature at the same time in an afternoon.

I experienced it yesterday, and funnily enough, the irony of yesterday is a perfect example. I placed a motion to this committee yesterday and then I had to leave and go up into the Legislature and speak. It makes such a farce of the whole process if we cannot serve our responsibilities the way we should. It is a fact of life that we do not have enough people in our caucus to cover everything that is going on in this building.

I may wonder, too, how practical it is with these large groups that want to come before this committee. I do not think there are very many empty chairs in this room even this afternoon, and when we get to these larger groups that want to make presentations--the employees and administration from employers--I am sure we will have large groups in attendance and it may well be that this particular room will not hold enough people.

There are a lot of impractical aspects in trying to carry on with the hearings while the Legislature is sitting. Personally and frankly, I am not in favour of that. That is why, Mr. Chairman, I am going to move again the motion I moved yesterday, which is that the groups be rescheduled to be heard by this committee at such time when the House rises and is not sitting, and in the meantime that the business of this committee revert back to hearing the estimates while the House continues in session.

I appreciate the fact it is in the form of a motion we can now debate. Mr. Mackenzie?

Mr. Mackenzie: First, the advice the chairman gave was probably the best advice. You do have the responsibility to finish the estimates and to have done that next week. That would be my idea of the best approach. I do not disagree with the motion moved by my colleague Mrs. Marland, although I have no difficulty, on the other hand, if an effort were made to see if any of the Hamilton or Oshawa groups could come here.

I point out to you, however, that at best you would get some of them and not all of them, so you are still going to have to schedule the other groups. I also point out that depending on the groups you get, you are not going to

accommodate them in this room, so you obviously have to make other arrangements on it. If you are going to do that, it does not make a heck of a lot of sense to me to try and cover whichever number of those groups you could possibly get coming over here, and then probably still have to reschedule a majority of the groups that were going to appear before the committee.

It strikes me Mrs. Marland's motion would be the most sensible approach. It is probably a continuation, adding the rescheduling that I think we had already more or less agreed upon, of the recommendation that the chairman made. To me that makes the most sense. But if you want to try some finagling around on the other issue, that is fine. The issue, however, is going to be that members are going to have to be here while the House is sitting, so anything that is done is going to have to be here.

Mr. Dietsch: I would like to address a couple of points Mrs. Marland raised with respect to the conduct of the business of this House. I am not sure we have both been sitting in the same Legislature.

I seem to recall, and it was put very clearly, that the government had business it wanted to put forward. The government business was important business that had to be dealt with. It seems to me that over that period of time I have heard of such things as bell ringing, delays, nonconfidence votes, emergency debates and all those things that go on that in a manner of speaking antagonize the whole of the House and stop the House from conducting its business.

There is no way this government has gone on the record as not paying heed to the numbers who are in the opposition parties. I think it was made perfectly clear yesterday and on a number of occasions that there was an understanding to try to accommodate individuals as they came forward in conducting their business along with the business in the House. We said some time ago, and there was a decision made, that there would be committee hearings and that we would go on with that particular business.

We recognized yesterday that starting early next week, there was an opportunity to complete some public hearings with respect to Oshawa and Hamilton. I understood the clerk to say earlier today that the reason the Toronto groups were not ready was purely from a point of view of not being prepared at that time. For the Hamilton and Niagara groups, quite frankly, I do not know how that same type of message can hold true. It is certain we will not be able to get them all before the committee, but certainly we will be able to accommodate more people before this committee.

I am not suggesting for a moment that we stop those hearings in those areas. What I am suggesting is that we continue on. We have a waiting list of a number of people. Yesterday, there was concern that we wanted to get as many people before this committee as possible. That is what we want to do. We want to accommodate and hear from as many people out there as possible.

Today, it seems to be that we want to set aside the business of this committee from the public hearings aspect and go into estimates. I personally do not think that is a good idea. I think we have sent a message out there that we are interested in hearing from those people. I think it is important we accommodate that. I suggest we can make those calls to that waiting list and we can make those calls to the Hamilton-Niagara groups or the Oshawa groups to bring their positions before us.

Mr. Chairman: I remind you that —

Mr. Dietsch: I am not finished, Mr. Chairman. The other point I would like to make is that we have talked about space. Perhaps there is space available to accommodate this in one of the buildings like the Macdonald Block or one of those places that is very close to this House so we can get back here in the event there is a necessity for a vote.

My office is in the Whitney Block. We are able to get here on time. I cannot see the need to project ourselves into estimates when the important business of this House is to conduct these public hearings.

Mr. Chairman: I just remind you that there was not an attempt to avoid the public hearings and go to estimates. It was an attempt to continue the public hearings next week. That is what the clerk spent the day doing, trying to line up groups. I think you have to be fair in that regard.

Mrs. Sullivan: I just want to add support to the points made by Mr. Dietsch and to remind members of the committee that there were about 21 groups scheduled in each of Hamilton and Oshawa. I assume that because they were scheduled and have agreed to appear, the preparation of their briefs and their interventions to the committee would be pretty well prepared.

I recognize the inconvenience of inviting them to appear in Toronto, but it seems to me reasonable that if the invitation were put to those 42 groups, they may well be accommodated in Toronto and we may well be able to get on with the public hearings for the consideration of the bill. It simply makes sense to me to continue to proceed at this time.

1550

Mr. Chairman: Thank you. Mr. Mackenzie.

Mr. Mackenzie: No. Because I would be arguing with Mr. Dietsch on another matter, I will let it go.

Mr. Chairman: Okay. We have in front of us Mrs. Marland's motion. I do not have it in writing. Perhaps the clerk can read it.

Clerk of the Committee: Mrs. Marland moved that the groups be rescheduled to the time when the House is not sitting and that the estimates be scheduled for next week.

Mr. Chairman: Let us deal with that motion. If it carries, we will deal with it. We will carry on that way. If it loses, we will deal with the question put by Mr. Dietsch and supported by Mrs. Sullivan about trying to contact the Hamilton and Oshawa groups to appear before the committee.

Mr. Dietsch: And the waiting list.

Mr. Chairman: Yes, and the waiting list. All right?

Mrs. Marland: Before you call the vote, you are probably one of the longest-serving people in this room at this point. Can you tell me whether, generally, the historical precedence for the operation of a committee with public deputations coming before it has been that it has attempted to be scheduled when the House is not sitting?

Mr. Chairman: I stand to be corrected by the clerk, but it would not be a precedent to have public hearings while the House is in session and to have groups appear before the committee. That would not be a precedent. Travel would be, but to have hearings would not be.

Mrs. Marland: It is not a precedent, but the normal practice has been that groups come when the House is not sitting.

Mr. Chairman: No, I would say that is not the case. It is not unusual. As a matter of fact, a couple of weeks ago we had Mr. Wildman's private member's bill before the committee and had groups come in. I would say that would not be that unusual, in my experience. We had Bill 30, as a matter of fact.

Okay, can we deal with Mrs. Marland's motion? Is it clear?

All those in favour of Mrs. Marland's motion, please indicate. Opposed?

Motion negatived.

Mr. Chairman: It is lost, which means that we should then still deal with the question of what we will do next week. Is it the wish of the committee that the groups from Hamilton and Oshawa be contacted to see if they can appear before the committee next week? Do I understand that clearly?

Mr. Dietsch: And the waiting list.

Mr. Chairman: The waiting list where?

Mr. Dietsch: The waiting list in those areas and in the Toronto area.

Mr. Chairman: I have one word of caution to the committee. If you are going to tackle the waiting list in one community, does that mean you are going to tackle the waiting lists in all the communities? If you are, that is fine, and we can set about trying to arrange the time of the committee to do that. It is just a word of caution that if you are going to set the precedent in those communities to deal with the people who are not on the list, then you had better be prepared to do it with other communities, because they will raise hell.

Mr. Dietsch: Quite frankly, I personally feel the Hamilton and Oshawa groups will come forward.

Mr. Chairman: That is not what we are talking about. We are talking about the people who are not on the list. We are talking about the waiting list, which is what you have referred to, the people who did not make it to the list. I am not arguing with you. I just want it clear as to what groups you are talking about: the ones that are already scheduled in Hamilton and Oshawa or the waiting list in Hamilton and Oshawa, or both.

Mr. Dietsch: What I am saying is that the people who are on the list should be contacted first.

Mr. Chairman: All right, the people who are already scheduled for Hamilton and Oshawa.

Mr. Dietsch: That is right.

Mr. Chairman: That is an important distinction, I would suggest.

Mr. Mackenzie: That does not include the waiting list.

Mr. Chairman: No, apparently not. Do you wish to put that in the form of a motion so that it will be clear?

I think we understand that Mr. Dietsch moves that, for the schedule next week, we attempt to schedule those people who are on the list to appear in Hamilton and Oshawa.

Would you accept a friendly amendment that if that does not work, the committee will not sit? We can only leave it up in the air so long, Mr. Dietsch.

Mr. Dietsch: If that becomes the case, then I think what I would suggest as a friendly approach to the whole thing is that the clerk can notify us and we can sit with the subcommittee and see what our next move will be.

Mrs. Marland: What would be friendly is to say that if that does not work, we could do estimates.

Mrs. Stoner: Just one point of clarification: There was one Toronto group that indicated it would in fact be ready to be heard.

Clerk of the Committee: They were prepared to come on Thursday.

Mrs. Stoner: That was one of the days we were going to sit and hear, so perhaps because they have indicated they are ready, they should be included as well.

Clerk of the Committee: They are prepared either way.

Mr. Chairman: All right, let's leave it at that. We will have the clerk do that tomorrow. If that is possible, we will schedule them for Monday, Wednesday and Thursday, the regularly scheduled hearings of the committee. If there is a hitch in the whole thing, we will have the steering committee meeting on Monday at one o'clock. Any problems?

Mrs. Marland: We are talking about the regular schedule of Monday, Wednesday and Thursday following routine proceedings.

Mr. Chairman: Exactly.

Mrs. Marland: Okay. I am wondering if you would accept an amendment to the motion which would be that if that does not work, we plan for estimates on those regular sitting days. You just confirmed that the Minister of Transportation (Mr. Fulton) is available on Wednesday.

Mr. Chairman: That is correct.

Mrs. Marland: What we are going to end up doing, of course, is not meeting until the subcommittee meets at one o'clock on Monday. In fairness to the opposition parties, which are not going to be able to get through the full allocation of time on estimates anyway, I think we should be willing to sit on Wednesday and Thursday with estimates if this alternative does not work with these groups.

Mr. Chairman: Would you be willing to let the motion stand as it is and allow the steering committee to try and arrange that on Monday, since we have Wednesday already lined up?

Mrs. Marland: Will the Liberal members of the committee agree to go into estimates?

Mr. Dietsch: We can meet earlier, Monday morning, if you like.

Mr. Chairman: I think they will, yes. There are some things you must leave up to the steering committee, to be fair. You are represented on that steering committee. I think it would be best to get a sense of what happens tomorrow. None of us will be here on Friday, but we can see what happens tomorrow and then the steering committee will make the determination. The steering committee must be unanimous in its determination or it will not happen. That is the general rule on steering committees. Okay?

Mrs. Marland: I understand. Will the Liberal members allow their representative to agree to estimates if we do not have anyone else? Are we not going to sit next week if we do not have the groups?

Mrs. Stoner: Except the steering committee is meeting.

Mrs. Marland: You are going to have a representative on the steering committee. I am simply asking, will you give that direction to your representative? Up to now, I have heard two votes against reverting to estimates.

Mr. Dietsch: We will, as we always do, come in to the steering committee with an open mind and listen to all sides of the questions before any kind of decision is made.

Mr. Chairman: I am going to call the question on Mr. Dietsch's motion to try and get the Oshawa and Hamilton groups in next week, plus the one group from Toronto.

All those in favour of Mr. Dietsch's motion? Opposed?

Motion agreed to.

Mr. Chairman: Anything else on a procedural matter? If not, Mr. Mackenzie.

Mr. Mackenzie: Is the question of extending the hearings still not a procedural matter?

Mr. Chairman: There was a motion by Miss Martel to extend the hearings. That was postponed, so it is postponed until somebody raises it.

Miss Martel: We are raising it.

Mr. Chairman: You are raising it. All right. This is the motion that Miss Martel moved yesterday, to refresh the memories of members.

Miss Martel moves that the committee direct the clerk to reschedule the public hearings in order that all groups who wish to be heard will be accommodated and that every consideration will be given to holding these hearings when the House is not in session.

That is Miss Martel's motion. It was not voted on yesterday because it was determined that we would wait until the House leaders had met today. At the House leaders' meeting today there was no conclusion as to when the House would adjourn. It looks as though it is going to be sitting for the next two to three weeks. That is our sense.

Mr. Dietsch: It seems to me, if Miss Martel will agree, that the subcommittee is meeting. I think we can work out the business of the committee to make recommendations to the full committee. I guess the point I would like to make is that yesterday we got into the same kind of long discussion. There are people here to make presentations before this committee, and I think it is important that we get on with that process and limit these kinds of debates that go on at these particular hearings and make recommendations within the subcommittee to come before us. It seems to me that is the way it was done previously when we talked about our hearings schedule, and that is the approach we should use again.

1600

Miss Martel: If I can respond to that, I will not do that, because I think I made it specifically clear last night that I would defer the question pending the House leaders' meeting this morning and any new direction we may get from that. I made it quite clear that I wanted the question to be looked at again today so that a decision would be made on it one way or the other. I will not agree to defer the motion any longer. I think that is a decision that can be made here by this group. We went through it yesterday. Everyone had time to consider it last evening and I would like to see us move into it and discuss it again and have some answer on it one way or the other today.

Mr. Chairman: Do you wish to speak to your motion?

Miss Martel: Yes, I do. The points were made yesterday but I think I would like to add a couple of things.

This is a very important bill, no matter which side of it you are on. There is a great amount of publicity out about it. There is a great amount of work being done around the province on this bill from people who will go either for or against it when they come before us.

As evidenced by the list of submissions we received yesterday, there are 612 groups that want to appear before us. Many others of those groups may have wanted to appear, but on phoning the clerk were told in some cases that if you were a steelworker, you would have one steelworkers' group representing you, so do not bother to call again.

I talked to the steelworkers and the Canadian Auto Workers this morning. I found that was certainly the case when they called in order to try to get more of their affiliates on. I think 614 is the number we are looking at. There are probably more.

I also want to say that I do not think the majority are individual submissions. I asked the clerk specifically this afternoon if she had a breakdown of what groups or individuals were listed in that 614. She could not give me any indication because she has not compiled the list. I do not think anyone here can suggest that most of those are individuals or most of those are groups, because we just do not know at this point.

However, I do think that given the importance of this bill and given the

work that is going on around it, every group and individual who wishes to be heard should have the right to be heard during the course of these hearings.

The second part of the motion is that the hearings be held, as much as possible, when the House is not in session. If I go back to the discussion that put forward this set of hearings, had we had it the Liberals' way we would have been into this mess over two weeks ago, because I recall Mr. Black moved that we would start sitting at the end of January. We fought fiercely against that, because at the time we did not know when the House was going to end. We thought it was going to go longer then, and we did not want to be caught in the situation in which we are now caught; that is, we are going to have to start postponing and I would think continuing to postpone because we have no idea when we are getting out of here.

I am not going to get into an argument now about whose fault that is. That is what has happened and I think we have to deal in a realistic way with that.

I would like to suggest that the hearings be held when the House is not in session because I do not think we should get into the business of setting precedent around here of having the committee travelling around while the House is in session.

We have already fought that in trying to get the hearings postponed the two weeks after Mr. Black had moved that we sit at the end of January. We made our points then and I would like to reiterate that given our numbers, we would find that extremely difficult to do. Second, it is not a common practice of this House to do that and I do not think we should be engaging in that now.

Those are the two points: I think that every group should be heard; second, I think we should try to do that whenever this House breaks and if we do not get through all those groups, then we do it the next time the House breaks.

Mr. Dietsch: I would like to put a couple of points forward that we discussed yesterday. I think we had indicated a willingness to hear as many people as we possibly could hear. That is exactly what we intend to do. There was agreement by this committee when we first started that we were going to enter into six weeks of hearings and hear as many people as we possibly could, and that has not changed.

We have been hearing from a number of people already this week on this particular situation. There are a number of things I feel we can do to accommodate more people, perhaps. We can look at accommodating groups of people. We agreed that we would take umbrella groups over other groups if the presentations were, in our opinion, comparable to each other. I think the clerk has done that in a couple of areas already.

I suggested that we deal with this in the subcommittee. The reason for that was that I think there are a number of points we have to look at. We have to look at the number of presentations that are before us by the same kinds of groups, different locals of the same union appearing before the committee on a couple of occasions; the same kinds of people being heard in the same areas.

I think it is important to note that every consideration is being made. I think we tried to wrestle with that question earlier this afternoon in terms of opening it up for other individuals to have an opportunity to come before this committee.

There are some duplications in the list that we should discuss, whether we limit them or do not limit them. We talked yesterday about the opportunity for submissions in writing, which will help to accommodate all those who cannot appear before us in person. That is not a precedent. It has been done on a number of occasions even in the short while I have been here. As far as we are concerned, we are more than willing to accommodate wherever possible, and I think we have done that.

I believe the motion is not in order at this time. We should be sitting down to work out some of these areas. Through the subcommittee process, we will air those things in setting the business next week and the weeks after, in terms of the hearings we will put before us. I do not think it is necessary for a prolonged debate on the issue, unless it is something you want to drag out and wait for some other approach. I do not know what the process is.

Mr. Mackenzie: First, it would be a strange day in a committee like this where it was out of order, Mr. Dietsch, to move an extension of the hearings. That was explicitly accepted when it was moved by my colleague the day before. That is clearly the case.

It is also clearly the case in this committee, and forgive me for being fairly blunt, that some people do not understand the issue of umbrella groups and the importance of this committee giving the signal now that it is going to hear all the people who want to be heard. One of the arguments in defence that at least one of the people who sat in on the session yesterday got was that an awful lot of the applicants were single groups or single people.

I want to underline one of the things this committee has done in trying to deal in the six-week time frame we started with—which is now almost two weeks less—one of the complaints, for example, which is legitimate if you understand anything at all about organized groups.

Elliot Lake was probably one of the real hot spots for years in terms of Workers' Compensation Board problems and breaking some new ground. The United Steelworkers of America, unless there has been a change that I am not aware of, is literally furious—I had lunch today with the director of health and safety matters—because with the hearings in Sudbury, they are considered under the umbrella of the steelworkers; Local 6500, the big local, is the steelworkers' representative in that city. Three full busloads are coming in from Elliot Lake but they do not even get a hearing in the schedule that has been set up there because they are steelworker locals.

If you do not think that is ridiculous, I do not know where you are coming from. I suspect there is no division made if Falconbridge and Inco want to put in two separate briefs, whether they do or do not, in that city.

1610

Let me give you another example of how absolutely ridiculous what has happened is. Here in Toronto, because the first call came in from the Toronto area council of the steelworkers—and there are a lot of different issues and a lot of different locals under that Toronto area council—the scheduling was made for a gentleman, a brother from the area council, to be the spokesman. There was a difference in time frame, as there always is where unions are dealing with a problem like this.

So, when Norm Carriere called on behalf of Leo Gerard, the director of the union, he could not make a presentation in Toronto. They worked it out.

How was it worked out? He made the last presentation on the day we were to be in Oshawa, which was not convenient for him; but I do not know anybody, other than maybe Gordon Wilson or Bob White, more involved in the affairs of labour generally.

To have said to the director of the steelworkers' union and their health and safety representative that because we are operating on an umbrella basis, one of the area council people will make the presentation because they were in first, but you will not, is so ridiculous it defies belief. We are looking at situations like this in Hamilton; we are looking at them right across this province.

The ones I could check quickest and easiest were the steelworkers locals. There are very few, if any, individual presentations; they are all coming from locals. If somebody is trying to say, "Because you are from a local you are an individual," let me tell you, the problems and the compensation cases can be a hell of a lot different between Elliot Lake and I. J. Case in Hamilton or the mines or a number of other locals. Some things are common, but there are a lot of difference as well.

I suspect that any quick check will show that has happened with local unions right across this province. I suspect it happens with other groups. We have literally disenfranchised over half the people who wanted to make presentations to this committee. Even if we get some of them to fill in now, while the House is sitting, from the Hamilton-Oshawa area, you are going to have, in effect, less time—four weeks, rather than the six we had. There is no way you are going to allow a complete and open hearing of all of these people unless we do some extension of the hearings. There is no way that they should be denied on an issue like this.

I have one other problem. I want to put it very bluntly and I want to put it while the minister's assistant is talking to Mr. Dietsch. I want to know just what independence this committee has. This committee is supposed to set its own rules and supposed to have some independence. We have had a couple of examples, which I will raise a little later, about whether or not people before this committee do have any independence in terms of speaking.

I want to make one other thing clear, too: it is so important on this issue that the local unions, injured workers and the legal clinics and so on get their say, because they have fought this thing for 15 to 20 years now. It is so important that they get their hearing, so that we get some chance to make recommendations and influence members of this committee. As I told a couple of members in this committee earlier, I would like to know if there is any openness on this committee and if the members are open to persuasion, if the case can be made by the stakeholders in this situation. I was told, "As much openness as you've got."

Fine and dandy. I could move, if we could amend this bill or there are some things I may not want or that we might have to give up, although my opinion is the bill is so lousy it has to be changed, but I am not wedded to anything, other than I know this particular legislation is bad legislation.

I am glad the Minister of Labour (Mr. Sorbara) is back, because I would not have wanted to have said it before he came in. The Minister of Labour met with a bunch of workers in Thunder Bay last Thursday, as he has been doing across the province. Unless he did not say this, the very clear message—and I think we can verify it from the labour estimates as well—to those injured workers and local unions and staff representatives, at least four of whom I

have now talked to, among other things I will not get into, was that he did indicate that the dual award system is totally untouchable, non-negotiable and will not be changed.

That is one of the key elements of what we are discussing and one of the reasons we have taken this out to public hearings across this province. One of the strengths of a committee in this House, if it operates properly—and I think they have proved it federally in the last year or two—is that the committee does have some say, some independence, some ability to make recommendations.

If we are going into these hearings and are going to truncate them and let a lot of the key players not have a say to begin with, it is going to be very difficult to convince some members of this committee that maybe, just maybe, the minister is wrong. And when we get into arguments in this committee, the members should argue among themselves; they can certainly go to their own caucuses for advice, but I do not think the message should be passed on from the minister himself or any of his staff. I want to make that clear.

I want to make that clear, and I want to make it clear as to why I think it is that important that we open this up and make damned sure that every single one of the groups—because they have got a stake in this—gets its hearing before this committee.

I do not think there is another issue as important or another issue where we would try to truncate the hearings the way there appears to be a case going on here now. I think that is why we are making this case. That is why we have got to know whether we are prepared to let the people who are going to pay the price of this bill at least have their day in court and see whether or not there is any chance of moving members. That clearly is what is at stake.

Mrs. Marland: First of all, I should say that we support this motion by Miss Martel. What we are getting into, of course—which is very discouraging for those of us who do believe in public hearings being just that, public hearings—is actually controlled public hearings. I think if that is what the exercise is going to be for this committee going around the province, then we might as well save the \$100,000, \$120,000 or whatever it costs to put a legislative committee on the road. You might as well save that money and decide that this is a big farce.

Unless this motion is supported, we have betrayed the people whom we invited on both sides of the issue. Speaking for our party, I have to tell you that obviously we see pros and cons in this legislation. Speaking for our party, we know that the present system for workers' compensation in this province is a mess. It is not working. As I said yesterday, it is not working well for the people who try to make it work, namely the board. It is certainly not working for the employers, and we are told, of course, time and time again that it is not working for the employees.

If we are going to try to remedy a system so it will work for employers and employees alike, then we had better hear from these groups. If this motion is not supported, where it becomes a betrayal is the fact that we agreed to have public hearings. We sent out invitations, notices and advertisements for the public to come to us. Did we, at any time in those public notices, say that there would be a control about who spoke for whom? I do not remember us discussing that, and if I am wrong I would like the chairman or the clerk to correct me. Did we advertise that we would be limiting the groups? Did we advertise that certain people would have to speak for other people? If we did, we have never done it on any other bill.

Maybe I could have that question answered. We did not have ground rules about how people would come before the committee. We were simply, as a legislative committee, going to conduct public hearings. You cannot advertise and invite the public and then start changing the ground rules. Since we have not done it on any other bill, we certainly should not begin now.

Unfortunately, with the kind of stonewalling that we seem to be experiencing here—if this motion does not pass, then the people who vote against this motion are stepping back from a commitment made by this committee when this committee agreed to go out and hear from the public. This motion simply says to reschedule the public hearings in order that all groups who wish to be heard will be accommodated. Is that not what we asked? If we do not hear from them because of a time frame set not by those groups but by the Liberal government, a time frame which we now know is going to be reduced by two weeks, I would like to know where this wonderful open government is.

To tell you the truth, to hear some of the comments today, I think this whole exercise is probably going to end up the same as the exercise on bills 113 and 114, the Sunday shopping legislation, where the legislative committee travelled around the province, heard from 894 groups and the Liberal members of that committee did not listen. Of course, it is very hard to have the numbers we have on these committees. We, as opposition members, can do whatever we can attempt to do in terms of amendments to government legislation, but obviously with the weight of the vote in favour of the government on a committee such as this, unless we do have committee members with open minds, it is a whole waste of an exercise anyway.

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I would challenge the members who represent the Liberal government here today on this committee to vote in favour of this motion because it is simply a further confirmation of something that this committee and either you or your substitute members or other people who were representing your party previously agreed to. If you vote against it, then you are betraying the people for whom we advertised and invited to come to public hearings on Bill 162.

Mr. Chairman: There is a motion before the committee. I see no further indication of debate.

Mr. Dietsch: Do you have eye trouble, Mr. Chairman?

Mr. Chairman: No, I do not.

Mr. Dietsch: I am sure there are hearing problems on this committee in terms that there has been no indication ever with respect to any of the members of this particular committee not coming forward with very open and clear minds on what would be presented before this committee at any time. That is the way the committee structure operates. I can assure Mr. Mackenzie and Mrs. Marland that there is no intention of that changing. We are going for public hearings to hear exactly what the individuals who come before this committee have to say in terms of making the presentations.

We are talking about the motion that the committee direct the clerk to reschedule public hearings. The first questions that comes to mind are when and where. We have gone through the process already of establishing a schedule, which we are in the process of following. These are public hearings that we have before us today.

We are talking about affording the opportunity of everyone to be accommodated. We are very open to accommodating as many people as we possibly can. Bill 30 had 900-odd submissions before it. Not all had the opportunity to share their views with the committee openly at a public meeting, but everyone had an opportunity to put in writing their submissions to this committee for its due consideration, as was the case with Sunday closing, as was the case with Bill 83 that this committee recently dealt with. We have every opportunity to continue on with that approach.

It is important that we hear the individuals' input so that we can, in fact, with an open mind listen to what their concerns are, so that if modifications can be made to accommodate those concerns, there will be every attempt for those accommodations to be made. I think that to hold public hearings when this House is not in session is a position that our friends opposite put forward.

We have said we are quite willing, and it has happened in the past that this committee was perfectly willing to go out and listen to hearings outside of this House. We recognize that it creates some problems, but certainly we are more than willing to accommodate in every respect the hearing of concerns that are out there.

We talk about some of the things that have to be discussed. We are willing to schedule Fridays as an opportunity to hear public hearings. We are willing to extend the hours. Some of the meetings do not start until 10 o'clock. We are willing to start them at nine o'clock. We are willing to go into the evening time. That is how dedicated we are with respect to hearing these concerns. We are willing to listen to those concerns.

Mrs. Marland: You cancelled private members' business this morning.

Mr. Dietsch: You do not seem to want to listen to the points as they are put forward. You want to listen only to those things that you want to hear. As hard as it was for me to contain myself when you spoke, I think I should at least have the same kind of courtesy and I am sure I will get it.

You know, to disenfranchise the individuals who are out there has nothing to do with this particular committee as a whole. It has been the responsibility of the clerk of this committee to accept and put on that list, wherever possible, as many people as she can. And she has done an excellent job of that. There are some areas, however, that I feel we could look at in those respects. Some hearings are 20 minutes long, some are half an hour long and some are an hour long. Perhaps we could look at some of those areas.

In terms of looking at some of those areas, if we want to debate them all this afternoon, I suppose we can debate them all this afternoon. I did not choose to do it that way. As we had done before, this committee through its subcommittee sat down and worked out terms of reference for this committee in terms of hearing dates. It agreed on six weeks and travel accommodations and came back with a response to this committee and it was accepted. That does not seem to be the way that you want to do it today. Personally, I do not know why.

Most forcefully, I want to put forward the point that these meetings are not controlled by anyone.

Mrs. Marland: Who came and gave you your directions a few minutes ago?

Mr. Dietsch: Excuse me, Mrs. Marland. Next time someone comes and talks to you perhaps I will put it forward at that particular time.

Mrs. Marland: You do not see somebody coaching me.

Mr. Dietsch: We have, from time to time in this committee, many people who come forward to talk to us at different and ongoing times. If we want to assume that they are saying things that you would like them to say to us, fine. That is perfectly within your right to look at those kinds of things, I suppose.

But I want to stress most forcefully, Mr. Chairman, that each and every one of these committee members is most open to hearing the concerns of the workers and the employers across this province with a very important bill, this Bill 162.

We do not want the days of the 42 years—with all due respect to the chairman of the board—of what has been happening with the WCB across this province to continue. We want to take it with an open and honest look to make some improvements to the system. That is what it is all about.

Miss Martel: I would like to make a couple of comments. I sat on the subcommittee. I do not think Mr. Dietsch did. It seems to me that I clearly remember that the subcommittee, in fact, did not make the decision on the areas we would visit, nor did it make the decision on the number of weeks we would sit. There was a very avid discussion, in which Mr. Black and I participated, about how many weeks we were going to sit, but the whole committee was there. I remember Mr. Haggerty saying he did not want to sit at the end of January because he wanted to take his wife away. That was done with the whole committee and not the subcommittee.

Mr. Dietsch: Mr. Haggerty is not on this committee.

Mrs. Marland: He was a substitution that day.

Miss Martel: Excuse me. I cannot understand why we are coming to this and why Mr. Dietsch is saying that this is the way it has been done, and the subcommittee made those decisions before and should make them again. In fact, most of the arrangements were made by the whole committee. The travel arrangements were not made by the subcommittee. They were made by the clerk. She did all of the flights and accommodations and all of the bookings of where we were going to be. So let's be clear about that.

Second, he made the comment that there is no problem rescheduling the hearings but when is this going to happen. I made it very clear in the motion that I want every consideration to be made to holding the hearings when the House was not sitting. That was the agreement that was reached the first time around, when we thought we would have six weeks of sittings. We are no longer in that position, are we? We are going to have to reschedule anyway, because we are now in the position that two hearings are out the window. The way things are going, all of the northwestern hearings are going to be gone as well.

So we are in the position that we are going to have to start to reschedule and we do not have the same number of weeks to work with as we did when we first set down the initial schedule. That is why I have specifically stated that the hearings should go on when the House is not in session. I think I have made that very clear.

He also said that we would be willing to sit at night, on Fridays and to lengthen the time. I have no problem with that, except that it is all going to require rescheduling as well. If we are going to open up the whole ball of wax and reschedule people, why do we not make a commitment now that we will hear everyone who wants to be heard and accommodate everyone who wants to be heard?

The clerk has to start again as it is. Let us do it right by agreeing that we will hear from everyone. We will find out who wants to appear. We will not say all the steelworkers should be an umbrella group that will have only one chance to speak and that will be in Metro or in Sudbury, etc. But we will look at all organizations and allow them all to speak.

We certainly, on Bill 113 and Bill 114, did not tell all the churches to come together and have one say in one city. I remember Shoppers Drug Mart was allowed to appear all across the province as well.

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No one in this committee ever said all the steelworkers or the Canadian Auto Workers, etc., should be considered an umbrella group. The umbrella groups, as I recall the discussion on that, wanted to sit on one day in Metro. That was four legal clinics in Metropolitan Toronto with the injured workers' groups. That was the discussion around umbrella groups that I remember.

I just wanted to say again that if the Liberal members have no problem accommodating everyone, then I cannot see what the problem is in not agreeing to this motion, because that is exactly what I am asking for us to do: to accommodate everyone who wants to be heard and who has a right to be heard, and that every consideration be given to doing it when the House is not in session. That was previously the case before we got into this mess of having to continue sitting.

Let me make one last comment to Mr. Dietsch about his comments that the Liberal members of this committee are coming with a very open mind. I suggest that he go back and take a look at the Hansard from the standing committee on general government two weeks ago, where both my colleague from Hamilton and I and the Minister of Labour got into the discussion about Bill 162. The minister was very clear that the three principles of reinstatement, rehabilitation and a dual system were part and parcel of this bill and there would be only minor tinkering around those, but that the government was committed to this.

Of course, the reason was that there had been a vote on second reading and the majority was in favour. Well, we all know the numbers around here. It did not take into account that the two opposition parties opposed that. He was very clear that those three issues were key; there would be minor tinkering but no major changes. If you do not think there is a problem about an open hearing process, then you are very wrong.

Mr. Dietsch: We will probably get into a debate about what is an open mind.

Mr. Mackenzie: I will be a little kinder than my colleague in that I am very pleased to hear Mr. Dietsch say they do have an open mind and he is not wedded necessarily to the absolute position the Minister of Labour has now put on a couple of occasions. If there is a chance that we might at least listen to some of the deputations that will be made by the unions and injured workers, then it is a great gain we have made. I am willing to take him at

face value and let the results of the committee hearings be the final proof of whether there is any kind of openness in the hearings at all.

As to the other thing—when are you talking about if you extend it?—I think my colleague has answered very clearly. There is no way, as I see it, that you are going to finish it in this short break we have, which means you probably have to continue the hearings if you are going to hear everybody. I have no difficulty with it, but let me make it very clear I do not want to be sitting Fridays, Saturdays and evenings. That is the last thing on earth I want, and I think it is the last thing most members want. If they have a fairly busy constituency office, then it is hell to pay in the work you are responsible for.

But those things, I think, are all negotiable. The problem is that you are going to have to reschedule it if you are going to accept that everybody gets a chance. That is what is at stake in this, and you are not going to do it any other way. That is why I really do ask the members to show a willingness to schedule so that all of the groups are allowed to be heard in this committee.

Mr. Chairman: Are there any other comments on the motion by Miss Martel? If not, are you ready for the question? All those in favour of Miss Martel's motion, please so indicate. All those opposed?

Motion negatived.

Mr. Chairman: Can we move to the order of business for the day? We have before us today, along with the Ministry of Labour, the chairman of the Workers' Compensation Board, Mr. Elgie, and the president of the Workers' Compensation Board, Mr. Wolfson. I welcome you gentlemen to the committee. We look forward to your presentation.

WORKERS' COMPENSATION BOARD

Dr. Elgie: Thank you very much, Mr. Chairman, for this opportunity. You have been good enough to introduce Alan Wolfson, who is the vice-chairman. On my left is Henry McDonald, executive director of client services. In the audience, from the board staff, we have Dr. Elizabeth Kaegi, vice-president of policy and specialized services, Sam Van Clieaf, vice-president of corporate services, Mike Czetyrbok, vice-president of client services, and Bob Coke, vice-president of strategic policy and analysis. In addition, in the event that there are some other questions board staff might be needed for, I have John Neal, the board actuary, here.

Mr. Chairman: Oh, good.

Dr. Elgie: You have met him before, Mr. Chairman, I believe; not over 42 years, but over a shorter period of time. Stan Bucci I am sure you have not met before; he is much younger than you and I. Sandra Sinclair is the manager of our program evaluation division. Linda Angove is the secretary of the board, and Richard Allingham is the director of research and evaluation.

I will ask Alan Wolfson to make a presentation to the committee.

Mr. Mackenzie: Can I ask a question? I think it is legitimate. When we have the presentation from Dr. Wolfson and if Dr. Elgie has anything further to say, do these two prominent members of the board have the independence to answer any questions members ask or will the minister be answering for them, as he did with the witnesses we had yesterday?

Mr. Chairman: To whom is that question directed? The minister?

Mr. Mackenzie: I suppose so. Maybe they can say whether they have the authority to deal.

Hon. Mr. Sorbara: I object to the premise of the question. I would suggest to the committee that we listen to the presentation and that all of the committee members interject with their questions if they feel it appropriate or perhaps wait until after the presentation and ask all their questions after the presentation. I have nothing to say about when those questions should come, whether they should be interjected—

Mr. Mackenzie: It is important. The minister can reject the premise of the question, but it was very clear. On policy or whether they would comment on input they had had from client groups, the witnesses we had before us yesterday, Mr. Di Santo and Mr. Mandlowitz, simply were not allowed to answer. When we tried to put specific questions to Mr. Gladstone, we got exactly the same answer.

The minister made it very clear to us during the Labour estimates that he would not allow his staff to answer questions or make comments about presentations he may have had. The two before us today are key players, probably even more key now, although maybe not as directly in touch with the people using the services of the board. If the previous witnesses could not answer questions on their own, the answer we got was the minister's answer.

Hon. Mr. Sorbara: I would just point out that the two witnesses who joined me at this table yesterday were employees of the Ministry of Labour. The two gentlemen sitting on either side of me today are appointed, in the case of Dr. Elgie as the chair, and in the case of Dr. Wolfson as the vice-chair and president of the board, by order-in-council appointments. They are not employees of the Ministry of Labour. They are the senior officers in a schedule 3 agency. They will make submissions to this committee based on their responsibilities for the Workers' Compensation Board.

If I can be helpful when there is a question and shed any further light on it or if it is a question about, for example, why the government determined to phrase a certain passage in a certain clause of the bill, I feel it would be appropriate for me to answer that question, because it is the government's bill standing in my name in Orders and Notices. It is not the Workers' Compensation Board bill. I certainly do not intend to constrain either of these individuals in their ability to answer questions on matters within their jurisdiction. The Workers' Compensation Board is within their jurisdiction, not mine.

Mr. Chairman: We will just proceed and see how the mop flops.

Mr. Mackenzie: Fine and dandy.

Dr. Wolfson: You may be somewhat surprised to hear this, but I really am delighted to be here with the committee today. The Workers' Compensation Board does not often have an opportunity to lay out before a public group such as this the way it functions, the way it sees its operation and its mandate, what new initiatives we have in place and the way we project the future in terms of our ability to implement a very massive piece of new legislation.

I will briefly lay out a little bit of background, the history, structure and processes of the Workers' Compensation Board, talk a little bit about the new initiatives that are under way and then proceed to discuss the impact of Bill 162.

The Workmen's Compensation Act was first enacted in late 1914 and took effect in 1915. The coverage at the time was about 15,000 employers and there were about 17,000 claims. Almost 75 years later, we have about 15 times as many employers covered and about 30 times as many claims processed by the board. There has been, therefore, an enormous change in our environment, but until recently, the structure and organization of the board were basically unchanged over that period of time.

The four basic principles that were established in the first statute remain; namely, no-fault, guaranteed compensation benefits for workers, protection against legal action for employers, the system to be funded by employers on a collective liability basis and to be administered by an independent agency.

The first major reform of the organizational structure in the postwar period occurred in 1985 with Bill 101. There were a number of significant changes to benefits: an increase in the ceiling of about seven per cent, the establishment in statute of a particular supplement for older workers who could not return to work, a new and very much enhanced system of survivor benefits, a dual award system with both a lump sum and a continuing pension for survivors of fatally injured workers and a new basis for computing compensation using 90 per cent of net income, after tax, rather than the previous 75 per cent of gross income.

The major changes in Bill 101, however, were directed to the administration and governance of the board. A new independent board of directors was established. We have nine outside directors, four representative of workers, four of employers and one of the public and professional persons, in addition to the chairman and myself.

Bill 101 established a new, independent appeals tribunal, the Workers' Compensation Appeals Tribunal; also, the Industrial Disease Standards Panel to provide advice to the Workers' Compensation Board on criteria for industrial disease compensation. As you know, the bill established independent worker and employer adviser offices.

The next major change occurred the following year when all the benefits within the act were formally indexed.

Over the last three years, we have put Bill 101 into motion and reorganized the board very significantly in order to set it forward in addressing the needs of a changing environment. We have created four new divisions, and the charts that you have at both ends of the room display our new organizational structure.

Prior to 1986, there was a very confusing organizational structure with about a dozen separate divisions, each reporting to the vice-chairman of administration, with very little linkage across those divisions—duplications and redundancies. We streamlined the operation, therefore, in 1986, into four areas.

Client services is the biggest area, providing direct services to injured workers and employers in respect of benefits and revenues. A new

division of policy and specialized services was created to bring together the disparate elements of operational policy formation, guidelines and procedures and also to provide specialized services in the areas of vocational rehabilitation, medical rehabilitation and accident prevention.

We established a corporate services division for areas such as information systems, our computing services, our review services, human resources and the like. Finally, we created a strategic policy and analysis division, including our strategic policy branch, our general counsel area, corporate secretary, research and evaluation, actuarial science and the like, to really provide a focus for policy development, which is so much at the forefront of many of the issues facing the board today.

In doing this, we were really governed by an attempt to create a new climate at the Workers' Compensation Board. There had been criticism of the board over the years, some of it perhaps justified, some of it perhaps not. In any event, it focused on the closed perception of the board, the board being entrenched and not open to its constituencies, on unfocused and disparate service delivery without integration, on rigidities and centralization with all the activities emanating out of head office in Toronto.

We have really made a very dramatic effort, I think, over the last two or three years to change not only the organizational structure but the climate and culture of the organization. One of the most important elements has been the decentralization of our services. You will see from this chart that in 1985 we had about 15 per cent of the board's claims handled by regional offices. There were only two offices, one in London and one in Sudbury. In 1986 and 1987 we opened four new regional offices, in Hamilton, Thunder Bay, Ottawa and Windsor, and we moved about another one third of the business out from Toronto into the regional offices. It really is a massive undertaking to make that kind of shift in such a short time frame.

At head office, we established a new concept of service delivery. Previously, the various functions that are displayed here—claims, health care, vocational rehabilitation, medical, records—all operated separately in different divisions or branches within the organization. One might have to go to one floor, one branch, for the handling of a claim, a different area for a health care benefit and another different area for vocational rehabilitation, in each case with different files having to be moved and retrieved at great inconvenience to our clients. What the integrated services unit does is bring all that together so that there is, if you like, one-stop shopping for injured workers and employers in dealing with their workers' compensation problems.

We have identified for the integrated service unit, in seven cases, distinct geographical areas that are not served by regional offices; namely, the central core area of the province. We have seven ISUs, each of them attached to a distinct geographical area. All the claims emanating from that geographical area would be handled by one of those ISUs. In addition, we have established an integrated service unit to handle all the claims related to construction, since it was not possible to identify them in any particular area.

I would like to take you quickly through the process that we have for dealing with a claim, because it will be relevant to some extent when we talk about how we propose to deal with Bill 162. It is a very packed slide. These are, I think, 1987 statistics, but they will not be far out now. In 1987, we had about 470,000 new claims. All of them would be seen by a group of primary adjudicators, some at head office and some in the regions.

Of those, 48 per cent will not involve lost time. These will be health-care-only benefits. They are dealt with very quickly and easily. Four per cent involve occupational disease, and that is the other end of the spectrum in terms of complexity and the resources that are required to deal with those kinds of claims.

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About 48 per cent do involve some time off work, so it is about an even split between lost time and no lost time. Once a primary adjudicator has determined that it is a lost-time claim, in the vast majority of cases the primary adjudicator can award entitlement. So in many cases—16 per cent—there is an allowance of the claim and it is finalized. In other words, the total payment is made at that point in time and there is no further action to be taken on the claim.

In 50 per cent of the cases, the claim is allowed and sent to continuing adjudication, because there is going to be continuing entitlement.

In about a third of the cases, the primary adjudicator cannot make the determination and sends the case down to one of the integrated service units, or it may be in a regional office, for determination by an adjudicator: an initial adjudication. If it gets there, again a very large proportion are allowed and the final payment made. A very small proportion, seven per cent, are rejected. The others, a little over a third, are allowed, and again go for continuing adjudication. Some of these, a small number, will end up being awarded a pension; somewhere between 10 per cent and 15 per cent. That is basically the flow of claims through the process.

Mr. Dietsch: Could you, while you are going through that, attach time limits to that flow chart for us?

Dr. Wolfson: The next slide will give you the overall time limits. We could provide more detailed information on the time on average that it takes for each step in the process. We can provide that to you. In aggregate, this will give you a sense of how long the process takes.

For all the claims submitted to the board, the 470,000 claims, almost three quarters of them are paid within three days. Within three working days of receiving the claim, a cheque is in the mail. For over 80 per cent, the initial payment would be made within five days. So you can see that although there may be problems from time to time with particular cases, in the vast majority of cases the board is very efficient and very effective in dealing with these kinds of problems.

I mentioned that a very small proportion, maybe 10 per cent to 15 per cent, of continuing adjudication claims eventually end up getting a pension. Those are the kinds of claims that are the focus of this bill, so I think maybe we should spend a moment on how we deal with those cases.

First, a permanent disability compensation is now provided by the statute at the time of maximum medical recovery. We do not award a pension prior to that. That is a clinical judgement. It generally happens two to three years post-accident.

The permanent disability award under section 45 is supposed to be a proxy for the estimated loss of earning capacity, so although we use a clinical rating schedule to make the award, it is in statute, in concept, a

proxy for the loss of earning capacity. The way we make those awards is through medical examination and the use of a clinical rating schedule. Then a pension adjudicator takes that information, combines it with information about pre-accident earnings and the like and awards an entitlement. The pension adjudicator at that time would also consider the eligibility for a supplement under subsection 45(5) or 45(7). That is basically the structure or the process of how the system works at present.

If I could turn now to several initiatives that the board has undertaken within the last couple of years, I might just mention that I think all the members of the committee would have received recently a copy of our 1988 year-end review and the 1989 agenda. I think the clerk has extra copies of this if you need them. This report does lay out in far more detail what has really gone on at the Workers' Compensation Board over the last two or three years and what we see as the highlights of our 1989 agenda and beyond.

Some of the main initiatives that have taken a great deal of our energy over the last couple of years are listed here. We have a new medical rehabilitation strategy—I will go through each of these in detail in a moment—a vocational rehabilitation strategy, a claims adjudication strategy and a new workers' benefit system. That is a computer system and we are exploring imaging technology for the board.

The medical rehabilitation strategy that we developed last year has three major features. First, we are planning to develop a network of community clinics to provide physiotherapy and occupational therapy services throughout the province close to the homes of injured workers. We want to make that kind of service a more enhanced service and much more accessible. It will be supported by a network of regional evaluation centres attached to the teaching hospitals and university health science centres—about 10 or 11 of them—where we can get the specialized expertise to evaluate the rehabilitation status of injured workers and to give us direction or to give assistance to treating physicians on how to manage the cases.

Finally, there will be a provincial medical rehabilitation institute established to co-ordinate the research that may be taking place in the regional evaluation centres or elsewhere on workers' compensation and occupational health problems and to provide quality control and training that we will need to make this whole three-tiered system work.

The objective is to provide uniform, high-quality care much closer to workers' homes. We estimate that we will be spending a whole lot more on medical rehabilitation services as a result of this initiative—some \$35 million to \$60 million more—but we think that is a good investment because it will result in earlier care and more effective care and, therefore, reduce the impact of the injury and allow injured workers to get back to work at an earlier date.

We have also developed a new vocational rehabilitation strategy to provide early intervention and accessible and intensive services. It utilizes a partnership concept involving the injured worker, the employer, the worker's physician and the board itself. The objective of our vocational rehabilitation program is really quite straightforward. We want to mitigate as far as possible the effects of the injury. We want to try to make the worker as whole as we can. This will involve again a very significant increase in our vocational rehabilitation effort. We plan on increasing our in-house resources by about 50 per cent. Our total expenditures on an annual basis will be up by \$26 million to around \$46 million a year. That is up by more than 100 per cent.

The elements of the vocational rehabilitation strategy will be familiar to you because they really do mirror the proposed legislation. We will contact every injured worker within 45 days of the registration of the claim just to identify whether there is an early need for a referral for vocational rehabilitation. In any event, we will maintain that contact every six weeks thereafter. Within six months, if an injured worker has not returned to work or is not engaged in a vocational rehabilitation program, we will offer a vocational rehabilitation assessment. We will follow up after job placement at six months and again after one year.

This is a very major change in our approach to vocational rehabilitation. We initiated three pilot projects this past January, covering about 20 per cent of the board's case load, in the London regional office, the Toronto west integrated service unit and the central Ontario south integrated service unit.

Mr. Tatham: Is there any particular level of education that is the norm? Is it grade 8, 10 or 12? What literacy level is there as far as the injured workers are concerned? How many of these people do you have to try to bring up to a certain level?

Dr. Wolfson: I do not have the precise figure on that—perhaps Linda Angove might—but what I should tell you is that we have a very wide range of programs, in both literacy and English as a second language, that we offer to injured workers when they need that before they can enter certain programs.

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Mr. Tatham: To go on further.

Dr. Wolfson: Exactly.

We plan on full implementation of that strategy for next year. We have also now turned our attention to the claims process itself. We have talked about medical and vocational rehabilitation, but there are bottlenecks and inefficiencies in the claims process itself that need to be sorted out to improve the service that we deliver to clients and to expedite decision-making. We have recently set up a project team that will report to us in May, and we hope to go to the board of directors for a full implementation plan in the fall.

In order to make a system with almost a half a million claims a year manageable, we have to invest an awful lot in computers and computer systems. One of the most important initiatives we have under way is a system to automate the payment process. Not only will it ensure that cheques get out expeditiously and accurately, but it will provide an information base for the general management of the claims process, so that we can respond to telephone inquiries accurately and quickly.

This is a very major project that is nearing completion. It should be implemented in one pilot site later this spring. We plan on full implementation, board-wide, in the fall.

Finally, I would like to mention a new technology that the board is investigating and that is imaging technology. One of the real problems in managing an organization such as ours is the vast quantity of paper that comes in and must be moved around. Claims files, sometimes six or more inches thick, have to be taken up and down elevators and from desk to desk. We have

literally hundreds of people whose primary task it is to copy, sort, transport and store paper.

There is a new computer technology which would allow us to scan these documents and then move that information around electronically rather than physically. It would remove the dependency that everyone has on the claims file itself. It would give simultaneous access to that information to more than one user and allow us to sort out the workload allocation much more effectively.

Currently, we are developing prototypes for that new imaging technology and we hope to have it implemented next year. It is the kind of technology that would be very important in meeting the very direct deadlines that are established in legislation such as Bill 162.

Turning to the impact of the bill itself, there are a number of topics that I would like to consider. First, there are the immediate transitional impacts of Bill 162. As you know, there are some provisions that come into force upon passage of the bill, on third reading. Then there are a number of others, very significant ones, that may come into force at a slightly later date, but nevertheless involve a great deal of preparatory work.

I want to talk a little about the impact on the way we deal with temporary disability compensation, the maintenance of benefits section, the vocational rehabilitation provisions in the bill, the estimation of future loss of earnings, the noneconomic loss award, the retirement provisions in the bill and the reinstatement section.

First, transition. The bill, as you know, creates a provision that allows already injured workers, people who have had their injuries prior to passage of the bill, to potentially benefit from a supplement that would recognize the fact that their current permanent disability pension is not fully reflective of their actual wage loss. We estimate that potentially up to 20,000 pensioners might benefit from this provision and it would be effective immediately. We would then have to organize or deliver an outreach program to identify these workers, and we plan on establishing a special project team of about 20 people to do this on a priority basis.

Most of the eligible workers would be personally interviewed, but it may be possible from the vocational rehabilitation files, for example, to identify injured workers who would get the supplement without a personal interview.

Mr. Miller : Do you have an estimate of what that will cost?

Dr. Wolfson: Yes. I have a couple of slides at the end where I am going to get into the costing figures.

The temporary disability system is not the primary thrust of Bill 162, as you know, but there are some aspects of it that will be influenced. The principles of adjudication will remain the same, but the bill does provide that after 12 months there has to be a determination of permanent economic loss. So individuals would move at that point from the temporary disability system to the permanent disability compensation part of the act.

Miss Martel: Excuse me. What if those people are not at maximum medical recovery at that point?

Dr. Wolfson: As I recall, the bill provides that there is allowance

for an extra six months if someone is not at maximum medical rehabilitation before one conducts the first determination of future economic loss. In general, it is at 12 months or, in the case where there has not been maximum medical rehabilitation, up to 18 months. As the bill stands, we would in any event at 18 months make the best estimation we could as to the future loss of earnings.

There are a number of provisions or aspects of the system that are triggered by the registration of a claim. First, from registration, the maintenance of employment benefits is triggered. The vocational rehabilitation clocks—the 45-day and six-month clocks I referred to—are determined from the date of registration. The economic loss timetables—the first determination at 12 months, the second at 36 months and so forth—are determined by that initial claim registration. Finally, the time frame for the reinstatement period is triggered. So the claim registration date becomes an important operational date for the system.

Finally, there are benefits that are increased for temporarily disabled workers in Bill 162, notwithstanding that its major thrust is to the permanent disability system. Most important, it is the increase in the ceiling; the ceiling would rise from about 145 per cent of the average industrial wage to about 175 per cent, which is roughly a 20 per cent increase, a little more, and those increases would apply for temporarily disabled workers as well as permanent.

The bill provides for the maintenance of employment benefits. This is something the board, hopefully, will not have to get into in a significant way. The obligation will be on the employer to maintain those benefits, not the board. We will certainly provide a lot of educational input and communications, but noncompliance with that provision will be addressed as an offence under the Provincial Offences Act.

In terms of the vocational rehabilitation provisions of the bill, as I mentioned to you, our new vocational rehabilitation strategy really puts us in good shape to implement Bill 162. The 45-day and six-month features of the bill are already incorporated in our strategy so that we will be able to meet those time frames. This will be assisted by a new emphasis on early intervention and obviously by the reinstatement provisions of the bill, which will make it that much easier to get workers reattached to their original employers.

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Finally, our organizational structure, with the relationship between integrated service units and regional offices with the employers in their community, will facilitate rehabilitation efforts in getting workers back to work, both with their original employers as the first, most desirable, option and with other employers where that becomes impossible.

The impact of Bill 162 on permanent disability compensation is going to require a major adjustment for the board in that area. After 12 months of continuous temporary benefits or where maximum medical rehabilitation has been established, whichever comes sooner, the adjudicator will have to estimate the future loss of earnings capacity. This will be done by an interview with the worker and with the assistance of some economic loss analysis that will relate labour market prognosis for workers in general with various kinds of characteristics.

The dominant determinant of the economic loss award will be the injured worker's own post-injury experience. The adjudicator will make that decision in the first instance, but it is, as are all decisions of the board, appealable to the Workers' Compensation Appeals Tribunal.

After that initial loss of earnings capacity determination is made, there are two further reviews. The initial determination, in general, will be made, say, at one year after the injury, and that award will then be fixed for two years. Two years later, we do another review, and three years after that, there would be the final review to establish the permanent disability award until age 65.

The process is the same as I have just mentioned. The adjudicator will determine the economic loss award, but as we get more and more experience with an injured worker, after 24 months and after five years, it will be that much clearer what the long-term prognosis for this worker is in employment; therefore, the estimate of the future loss of earnings should be that much more accurate. So it is after five years that the economic loss award would be fixed until age 65, except in those instances, as you discussed earlier this week, where there is significant and unexpected deterioration in the injury condition itself.

Miss Martel: I thought the bill also said it can be reconsidered at any time that the board considers it appropriate to do so.

Dr. Wolfson: Yes.

Miss Martel: And that there was not necessarily a stipulation that that had to occur if there was a reassessment of a pension.

Dr. Wolfson: Perhaps you will direct me to the provision you are asking about.

Miss Martel: I was under the impression that the review of the future loss of earnings award would be done two years after, five years after and at any other time the board considered it appropriate. That is on page 8 of the bill, subsection 45a(2).

Dr. Wolfson: "...up to the time that the worker reaches 65 years of age, as the board considers appropriate in the circumstances."

Miss Martel: So not only are we looking at a review at 24 months and five years, we are also looking at any time the board considers it appropriate. Really, to say that after five years that pension is fixed is not quite correct.

Hon. Mr. Sorbara: Could the particular section which the member is referring to be quoted?

Miss Martel: Subsection 45a(2). That subsection outlines how the future loss of earnings benefit is determined and at which times it will be looked at.

Hon. Mr. Sorbara: That does not say anything about review periods. The time frames are set out for these reviews in clauses 45a(8)(a), (b) and (c). The provisions in subsection 45a(2) provide that payments are to be made "up to the time that the worker reaches 65 years of age, as the board considers appropriate in the circumstances."

Miss Martel: My concern is that the two-year and five-year limits that we are talking about can be completely undone by that line, can they not? What subsection 45a(2) says is that payment will be made "for such period, up to the time that the worker reaches 65 years of age, as the board considers appropriate in the circumstances."

It seems to me, as I read that, that the board at any point in time can review and make changes. Indeed, after two years or five years that future loss of earnings payment is not fixed up until age 65.

Hon. Mr. Sorbara: Perhaps the president of the board would want to comment on that and determine how this would operate under the board as it deals with this section.

Dr. Wolfson: Without getting into the statutory interpretation, which perhaps is better deferred until clause-by-clause, I will tell you what we think we would do. It is precisely what I have said: to have a review at one year, another review at three years and another review at six years and that would be it. It is not our intention to reopen these cases arbitrarily, capriciously or at any other time.

Our understanding of the legislative thrust in the bill is that it establishes very fixed time frames and a sense of finality at the final determination five years after the first determination or six years after the injury. Our planning for implementation involves doing precisely that, determining a permanent pension award at the six-year mark, based on all the experience we would then have had with the injured worker and all our knowledge of his or her circumstances, with that award being maintained until age 65. That is the basis for our implementation planning.

Miss Martel: If I might continue, and perhaps the minister will have to respond to this as well, I guess that unless I see it written in there in specifics I am going to be a little bit concerned about letting that part go. This is not the only section where we need some clarification of language. I think the clarification of language should be made before the committee gets on the road because I think what you are going to see happening is that people are going to be addressing the same concerns that I raised here and also the same concerns that I raised in the course of the rehabilitation provisions.

I would like to ask the minister, will he bring in those changes before the committee goes on the road? I can assure him that people will be addressing those same things. I do not like to leave it up to what the board might want to do. I would like to see it in print.

Hon. Mr. Sorbara: I would be interested in the committee's views as to whether or not they wanted to deal with elements that I think are normally considered in clause-by-clause.

The reason the board is saying this is how it would do it is because the intention, as the government framed the bill, was that at the six-year point a permanent pension would be awarded from that point carrying on until age 65, subject to subsection 8 which allows for the worker to have the matter reconsidered if there is a significant deterioration.

I do not know if the committee wants at some point before the public hearings to have a discussion of that clause. Certainly we would be prepared to make legal counsel available for alternative wording if that were the case. I want to make clear what the intention of the government is within that section.

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Miss Martel: I am going to have to ask the minister that they seriously consider that, because I will continue to go by the fact that the board will have any opportunity to do that at any time it wishes, based on the wording under subsection 45a(2).

Hon. Mr. Sorbara: I have no difficulty with that.

Miss Martel: That is where we are going to be on that.

Hon. Mr. Sorbara: If it is the committee's determination that the wording in the bill does not give sufficient clarity, based on my comments as to the government's intention with the bill, and were the committee to ask me to suggest the possibility of amendments, that would be fine. My understanding is that normally happens in clause-by-clause analysis, but we could do it before. I could do it on the basis that we work up some language and I present it to the member for Sudbury East (Miss Martel) to see what other ways we might want to word it, but I want to assure her of the intentions of the government in respect of this particular clause.

Mr. Chairman: Miss Martel, would it be helpful if we asked the minister's legal people to prepare a different kind of wording, which would come to the committee to see what the committee thinks so that when the committee does travel and meet with groups, even if it is here in Toronto, there would be at least a proposed wording change in the bill that can reassure them? We have some of the finest legal minds in Ontario on this committee. They could certainly have a look at the wording as well.

Miss Martel: That would be fine. I would just like to make it clear. It seems to me that in two areas we do anticipate changes before this even goes anywhere. I would think, to give all of the people coming before us the benefit of knowing exactly what we are dealing with, those changes should be made beforehand.

Hon. Mr. Sorbara: I do not want to be put into a situation where the public is dealing with a variety of bills. The wording is here. It may well be that this committee decides it prefers this wording and it wants the board to operate under a far greater degree of discretion to provide a pension for however long the board considers it appropriate, with no reference to age 65. I am just telling you what the intention of the government is.

In this particular circumstance, I have no difficulty in discussing alternative wording. I just do not want to leave a misimpression that every time a section comes up today or in the next couple of days, a variety of bills become circulated. In this particular section, what we are talking about is that normally, and subject to subsection 8, the pension would be fixed and paid thereafter until age 65.

Miss Martel: It does not say that at this point.

Hon. Mr. Sorbara: I understand your view on that.

Dr. Wolfson: Once we did fix that final award, in fact all of these awards, we would have this new computerized system to expedite the payment.

The bill also provides for a new system of compensating for noneconomic loss. The act would require the board to use a prescribed rating schedule for

making this noneconomic loss determination. This schedule would be developed through a consultative process using, for example, the guidelines published by the American Medical Association and some international experts. We are doing a survey that I will describe to you in a moment. In any event, it would have to be promulgated through regulation. The worker would have the choice of being rated pursuant to this schedule, either by a Workers' Compensation Board physician or, as you know, by a physician selected from a roster.

Mr. Mackenzie: I wonder if I might pose a question at that point in time, a question that we have asked previously. Tell me the difference between a WCB doctor and a roster appointed by the WCB.

Dr. Wolfson: The bill provides that there would be a roster of physicians appointed, by order in council I believe, who would be independent, private practitioners rather than full-time Workers' Compensation physicians. I think that is the distinction that should be drawn.

My own view is that the kinds of evaluations that are made by physicians who are full-time Workers' Compensation Board employees are every bit as valid and independent as those one obtains outside. Our physicians have a great deal of professional pride in the conduct of their work. I know that view is not shared by everybody who is not as familiar with the way the system works as we are.

Miss Martel: No, we are familiar; we still do not agree.

Mr. Mackenzie: I cannot help but notice some of the laughs from some people in the room.

Dr. Wolfson: It is for that reason that this option is presented, but I did not want you to take from anything I said that we do not have confidence that our own full-time physicians can provide impartial and excellent medical evaluations on these kinds of conditions.

Mr. Mackenzie: Even if I do not disagree with you on that, you still have not told me the difference.

Dr. Wolfson: The difference would be that our physicians are full-time employees of the Workers' Compensation Board and do not conduct a private practice and see all kinds of other conditions not related to compensation matters. The physicians on the roster would be such physicians.

Mr. Mackenzie: But appointed by the board.

Dr. Wolfson: Appointed by the government.

Miss Martel: I assume that these people are going to be receiving some kind of payment for the use of their services by the board.

Dr. Wolfson: Yes, we would establish a fee schedule in order to remunerate these physicians, just as we do now for physicians in the community who provide services to injured workers on our behalf.

Miss Martel: I guess we are going to have to agree to disagree, because we do not see that there is much of a difference. That was our concern, that there was no role for the family doctor here at all.

Dr. Wolfson: I should note that these decisions will be appealable under the amendments that the minister has suggested.

At the end of the period of that final economic loss award, age 65, there is provision for the injured worker to receive a retirement pension. The retirement pension is to be funded by allocating an additional 10 per cent of all the permanent economic loss benefits that are paid throughout the worker's life towards a pension plan. It is a money-purchase plan so that the actuarial value of those contributions at age 65 is used to establish the benefit, and we would manage it through our existing pension plan system.

Mr. Miller: He will receive that after he is 65?

Dr. Wolfson: He will receive that from age 65 on.

Mr. Miller: What percentage of his income would that be?

Dr. Wolfson: That would very much depend on how long he or she had been on a permanent disability benefit, how young the person was then when he or she was injured, and on the level of that benefit. It would depend on both of those factors.

Dr. Elgie: It is assumed that there will be retirement benefits coming from his or her regular employment as well. This is to make up for the loss that has been sustained as a result of the injury.

Mr. Miller: Very good.

Dr. Wolfson: On the reinstatement provision, there are really two kinds of decisions that the board will be required to make. In each case, the adjudicator will make them with input from the vocational rehabilitation people at the board.

In the first instance, we will have to determine whether the offer made by the employer is suitable. If it is not suitable for the worker's condition, then it is not a bona fide offer in terms of discharging the employer's obligation to reinstate the worker.

Then there is a second matter which relates to what happens, potentially, after the reinstatement takes place. If the worker is dismissed within six months of being reinstated, then the presumption in the bill is that the worker is being dismissed because of the injury. The employer would be in contravention of the act and we would have to adjudicate that case.

We plan on having a separate branch in our review services area to hear those kinds of cases. There will be a hearing, but we hope to deal with many of these cases through early mediation, which has proven very effective in the labour relations field.

There are varied time lines that will have to be established to adjudicate these cases, because we really are concerned with the nexus between the employer and the employee. We cannot have long-drawn-out processes to sort out the problems. There will be penalties for employers who contravene the act.

Again, although we will make these adjudicative decisions in the first instance, they will be appealable to the tribunal.

Miss Martel: I have another question in that area. What happens to a worker who, six months and a day or eight months after, is let go by a company under the pretext of a work condition but it is because the worker is injured? Does that worker then have the opportunity to ask for and receive rehabilitation services?

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Hon. Mr. Sorbara: That would depend on the point the worker is at in the reinstatement process. I think we reviewed the other day the framework within which those time lines are set down; that is, for a worker who has received total temporary benefits. If a worker is fired, dismissed, discharged six months and a day after the beginning of that six-month clock, the real effect of that is that the worker no longer has the benefit of the legal presumption which is in the law. It may well be a finding that there is a violation of that reinstatement provision but there is no legal presumption there. Above and beyond that, the worker has all of the protections of his or her collective agreement to deal with issues relating to dismissal and deal with the procedure there.

Whether or not vocational rehabilitation would be available would have to be determined under all the circumstances of the case; but under most circumstances—and I will ask the president of the board to correct me if I am wrong—if it is within those time lines established under the bill, the answer would be yes.

Dr. Wolfson: The task of establishing compensation systems both for economic and noneconomic loss is a very onerous task. It will be a very considerable challenge for the board. We have to develop much better expertise with respect to the economic experiences of the injured workers after they suffer injury. We also have to develop a much better sense of how much loss of enjoyment of life one suffers through various kinds of disabilities.

In order to accumulate that expertise, that information, we are now beginning a survey of injured workers themselves to find out what happened to them after their injury, to get a much better sense of their employment experience and also to get a sense of their own evaluations of the disability that they have suffered, rather than simply take it from the historical ratings as given in the clinical rating schedule. We will be doing a very massive survey of injured workers to get that information.

So, as you see, there are a large number of issues that we will have to deal with in implementing Bill 162. The major ones relate to the economic loss analysis; the development of the schedule; the establishment of a reinstatement hearing branch; a retirement pension program; the implementation of the vocational rehabilitation and medical rehabilitation strategies, and setting up the team to deal with the transition provisions. These will have very large impacts on us in the areas of systems, staffing, training and communications. But we have a good head start in some areas and we are confident of our ability to put the resources in place. Should the Legislature pass Bill 162, we are certain we can make it work and make it work effectively.

I would like now, finally, to turn to the issue of the costs of the system as we have estimated them. I should caution that these are rough estimates, because until you actually have experience with the system it is impossible to know exactly how much it will cost. I could address a number of issues.

There does seem to be some misapprehension among our existing claimants, our existing permanent pensioners, that their pensions are at risk and that they will receive less money under Bill 162 than they currently receive.

If you look at this slide, you will see that that is not the case. This lists our liabilities as we have computed them for existing injured workers,

for people who have already suffered injuries. As you see, we have about 126,000 injured workers now who have been awarded permanent pensions. The actuarial liability associated with those pensions is \$5.5 billion. We have another 33,000 cases of injured workers who are on temporary disability and we think will eventually be awarded a permanent pension. Since their accidents have already occurred, they too would not be included under Bill 162 as it is currently drafted, but would operate under the existing system.

The eventual liabilities for those 33,000 would be another \$3.3 billion. The estimate of the board's liabilities in respect of permanent pensions, either awarded or pending, is \$8.8 billion. That is the current system under the statute as it stands.

Under Bill 162, all those 126,000 would continue to receive their pensions, but some of them would also get the supplements that are involved in the transitional arrangements. In fact, we estimate another \$700-million worth for those 126,000 existing pensioners. There will be a transition effect for the pending ones, as well, of about \$300 million. In total, then, we expect the liabilities of the workers' compensation system for existing claimants, people who have already had their injuries and had awards, to increase by \$1 billion. There will be \$1 billion more that will be paid to injured workers who have already been awarded pensions.

Mr. Miller: Where does the money come from?

Dr. Wolfson: Two more slides and I will specify exactly where it comes from.

Mr. Miller: I am a little too anxious.

Mr. Dietsch: Before you leave that slide, are you are saying that the 126,000 workers who are on pension at the present time will, in fact, remain the same? None of them will lose their pensions and many of them will have their pensions increased?

Dr. Wolfson: That is correct. All of them, in fact, will get an inflationary increase because that is built into the statute. Over and above inflation, many of them will get a supplementary increase to the tune of about \$700-million worth.

Mr. Dietsch: Just explain one more time to me "pending."

Dr. Wolfson: These are cases where the accident has occurred, where someone is on temporary disability and has not yet been rated for a permanent disability award, but we expect will be. It is some proportion of the existing recipients of temporary disability awards.

Mr. Tatham: That's under the old scheme.

Mr. Dietsch: They will not lose any pension. They will go through an increase in pension as well?

Dr. Wolfson: Yes, exactly.

Hon. Mr. Sorbara: If I could make one point perfectly clear, in technical terms it is not an increase in the pension. The pension that has already been established or the pension that would be awarded for those pending cases will remain the same. But is it a supplement? I made that

mistake in describing the bill early on. I think it is an appropriate correction. The pensions continue just as they are. If they are fixed, they continue to operate under the current law. What goes in addition to that is a supplemental payment based on an assessment of the real impact of that injury as compared to the pre-accident earnings.

Mr. Dietsch: Or as I would describe it, I guess, from what you have said to me, it would be an increase in money in their pockets but through a supplement.

Hon. Mr. Sorbara: Yes, that is right.

Mr. Dietsch: So they would not lose their pensions, which has been a major concern that has been expressed to me.

Hon. Mr. Sorbara: It is important to make that distinction because as soon as you say "We're going to look at your pensions," that suggests that somehow it is going to be reviewed and if the review is unfavourable, the pension is going to be lowered. That is why it is appropriate for me as the sponsor of the bill to get that message out very clearly. Those stay the same, but there is provision in this bill to award a supplement.

Mr. Tatham: There will be a plus.

Mr. Dietsch: I guess that is understood by everybody on this committee.

Dr. Elgie: There are two changes, if I might just add to that, in the supplement area. First of all, out of the present act, subsection 45(7), there is an older worker supplement. The chairman will know that the definition of "older" has been an issue that has been discussed many times before this committee.

Mr. Dietsch: He would wrestle with it, I'm sure.

Dr. Elgie: He's been here for 42 years, so he'll understand all that.

In the new legislation, the words "older worker" are removed. Anyone who would not benefit from vocational rehabilitation or is unlikely to return to work may receive the supplement. Second, workers who do return to work and suffer an income loss may obtain a supplement.

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Miss Martel: Before we go on, in terms of the supplement do those older workers who are applying for a supplement not have to meet the threshold test as well?

Dr. Wolfson: Under the transition provision, they would not have to meet the threshold test unless they are applying for a full vocational rehabilitation supplement. But the transition provisions which provide up to the old age supplement for any injured worker who is suffering a wage loss do not require them to meet the threshold test of being significantly greater than is usual for the impairment.

Miss Martel: Can I get some clarification on this, please? I am looking at subsection 135(2). I am assuming that we are talking about workers who now have a pension under that section.

Hon. Mr. Sorbara: Can you just give that reference again?

Miss Martel: Subsection 135(2). For those that have this bill it is page 18. I am assuming this section is for the people in transition who have a pension now and who are going to apply to the board for a supplement over and above their present pension. As I read subsection 135(2), that is significant because I think that is the threshold section. I would just like to get some clarification on that.

Dr. Wolfson: Again, that may be something the lawyers will want to look at. But from the point of view of the board's planning of how it would administer that provision, when we say there are up to 20,000 workers we think are likely to benefit, we have taken that number in terms of the workers we think currently under the existing system have an earnings loss greater than their pension. We have not looked to the issue of whether it is significantly greater than is usual; simply greater than their pension. That is how we came up with the estimate of up to 20,000 workers. In terms of the board's planning, that is how we have interpreted the section. If it is not correct in terms of statutory language, that is not something we have addressed.

Miss Martel: If I can clarify so everyone knows where I am coming from, my fear is that this wording looks to me like the same wording involved in the supplements policy in subsection 45(5), where there is a threshold test indicated. That is why I want the clarification.

Hon. Mr. Sorbara: It may well be that the member for Sudbury East is right. Let me undertake now to have legal counsel examine that and ensure that the provision of the section in the bill reflects the intention of the government on this matter.

Miss Martel: Arising from that, the 20,000 figure may change as a result; it may not be nearly as high. That is the point I would like to get across. I would like to know how we are getting to the 20,000 figure; if indeed this is the case, that this is the threshold, it may be nowhere near. I am wondering if we are not a little presumptuous to say we think 20,000 people are going to get a supplement when this bill passes.

Dr. Elgie: Could I clarify something, because I have heard Miss Martel say this before? Henry McDonald is here. The board had its own concerns about this issue and Henry McDonald was part of a team that followed the threshold test issue with workers since the policy commenced. I believe I am correct, Henry, in saying that there was virtually no change in the number of people passing the threshold test; maybe different individuals, but as a total group there was no change in the number of people passing the threshold test.

Miss Martel: Was that people who were applying for an older workers' supplement or all categories of supplements?

Dr. Elgie: It was all of them.

Dr. Wolfson: But to repeat, from the point of view of the 20,000 figure we have used there, we have not applied any restrictive notion of "significantly greater." We have used our best estimate of anybody who is suffering a wage loss that is not fully reflected and fully compensated by their permanent pension in building up these estimates. If these estimates are generous in terms of the statutory language, that has been our interpretation.

Hon. Mr. Sorbara: Just for the record, I will try once again to

articulate the government's policy and try to reassure the committee that part of our responsibility and part of your responsibility in examining this bill is to ensure that it does reflect policy. There are, based on estimates given to us by the board, some 20,000 people who are receiving pensions but have a significant gap between the level of that pension and their pre-accident earnings, all indexed and adjusted to compare what is happening today with what happened back then.

The purpose of the transition provision is to reflect the fact that some measure of redress must be done there. The government's determination was to allow supplements to be paid up to the maximum of the old age security in those cases. It would not apply to a person who, for example, in his pension was receiving far less than pre-accident earnings and for one reason or another simply has chosen not to work. Perhaps he had an inheritance, perhaps he changed lifestyles dramatically. But in determining the ability to earn, the real circumstances of that worker are such that the ability to earn compared with the pension being received does not adequately compensate and reflect the circumstances before the injury.

So there will have to be some sort of test to weed out those who say, "I like my pension and I have no interest in working and I've got no problem." Those people obviously would not qualify for the supplement, or those who had voluntarily retired or voluntarily are in other circumstances.

What we are trying to do in the transition provision is respond with this measure of support—you have seen the costs—for those who have suffered as a result of that disparity that I mentioned.

Dr. Wolfson: The next slide explains our most current estimates of the costs of the permanent disability system under the existing statute. There was a prior estimate used of \$650 million, which some of you may recall, as the annual cost of the permanent partial disability pensions system as it now stands. That \$650-million figure, however, did not include the costs of permanent pensions for schedule 2 employers, those who are self-insurers, nor did it include the costs of pensions that were commuted at issue. These are generally pensions with less than a 10 per cent rating and not involving any significant impact on earnings.

In addition, we have updated the estimates to move from 1988 to our estimate of 1989, and so our best figure now for 1989 is \$840 million as the annual cost of the permanent disability compensation system in Ontario.

Mr. Chairman: That is about a 30 per cent increase in anticipated costs, is it not?

Dr. Wolfson: Between the \$650 million and \$840 million?

Mr. Chairman: That is on an annual basis.

Dr. Wolfson: Yes, but the \$650 million, as I say, was a figure for 1988 rather than 1989 and did not include the schedule 2 industries or the commuted pensions.

Mr. Chairman: Right. Was there a reason it did not include those?

Dr. Wolfson: At the time those estimates were produced, we were working with the only available information we had, which was schedule 1 cases, and we were looking at the life pensions rather than the commuted

pensions. We could reproduce the analysis excluding those, but we think a more comprehensive picture is presented to see all the elements together.

I would like to describe to you how we think the economic impact of the bill would be worked through for permanent disability compensation recipients in the future. This is an annualized cost for 1989 or beyond, for individuals who have not yet been injured. But this is projecting what the new system under Bill 162 would mean for the same cohort of individuals who are now being awarded permanent disability pensions on an annual basis.

You can see that we now have roughly about 10,100 individuals who get a pension, a life pension, but do not get a supplement.

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Mr. Chairman: That is wrong right there. Add three zeros.

Dr. Wolfson: Sorry?

Mr. Chairman: You do not mean 10,100,000.

Dr. Wolfson: No. Those zeros are incorrect. I apologize. It is 10,100. In addition there are 3,400 who get life pensions and also receive supplements, either under subsection 45(5), vocational rehabilitation supplements, or subsection 45(7), older workers' supplements. There are, additionally, 4,000 individuals who get pensions that are commuted at issue. These are lump sum awards.

The current cost of one year's new awards for these 10,100 individuals would be roughly \$500 million. The present value for the people who get pensions and supplements would be roughly \$295 million. The lump sum awards cost us about \$45 million. All in all, it is \$840 million for the present value of the future stream of payments for people who get permanent disability awards under the existing statute.

Under Bill 162, if we take a look at this cohort of 10,100 individuals, what would happen to that new cohort in the future? We estimate that about 8,100 of them would return to work with no wage loss. These are not people who now get supplements; these are people who get life pensions. We think about 8,100 of them would return to work without any wage loss. That is the best sense we can get from looking at other jurisdictions. The cost of those individuals would be about \$70 million for the noneconomic loss award. Everybody would get the noneconomic loss award. There would be another 2,000 individuals who would get both a noneconomic loss and an economic loss award, because not everybody in this group returns to work at pre-accident income. Some return to work at lower wages, and some—a very few, we think—would not return to work at all. So we have estimated about \$110 million as the cost associated with that cohort.

In the next group, we think none of them would just get the noneconomic loss. Anyone who is now getting a pension and a supplement is not back at work without a wage loss. All of these people would get a dual award. They would get both a noneconomic loss award and an economic loss award. In each case the economic loss award includes our projections of the awards until age 65 and the costs of the retirement pensions thereafter. We think the costs associated with that group will rise to about \$545 million a year.

Finally, we have this group of individuals who are now given commuted

pensions at issue. They will continue to exist. They will get only a noneconomic loss award, and we estimate that the costs of that are about \$10 million.

What you can see here is that there is a significant redistribution from this group here, that now costs about \$500 million, to this group here, that will cost a little over \$500 million. It now costs just under \$300 million. That is the effect of Bill 162 from an economic perspective: to shift resources in the future from compensation for individuals, many of whom return to work with no economic loss, to those who do not or cannot return to work and therefore suffer a very significant economic loss.

Mr. Tatham: Is this about the same pattern as other jurisdictions?

Dr. Wolfson: Yes, indeed. We have looked at other jurisdictions in coming up with these estimates.

Mr. Tatham: So that is about how it works out?

Dr. Wolfson: Yes. We have used some estimates--

Miss Martel: I do not know if it would interest the rest of the committee, but I would like to see the estimates from the other jurisdictions if they could be made available to the committee.

Dr. Wolfson: Many of these are really through discussions with other jurisdictions rather than studies, because very few of them have either produced reports or in some cases been in the system long enough to have done formal analyses. Our sense from the other jurisdictions is that we have erred on the high side in estimating the extent of economic loss in this cohort. If anything, with active and aggressive vocational rehabilitation and with the reinstatement provisions, we ought to be able to have less impact of the injury on workers in terms of their economic loss.

Miss Martel: I guess I am a little concerned that we are not going on any written information but really through discussion. Not being party to the nature of those discussions, I am not sure what kind of questions you are asking and what kind of answers you are getting. I am wondering if there is something more concrete that can be provided to this committee so we can see how these figures were arrived at based on conversations with other jurisdictions.

Dr. Wolfson: We will be pleased to provide the committee with any written material we can find. I just alert you to the fact that there is not a large literature on this subject which has been produced yet, but we will undertake to come back to you with any information we can.

Mr. Mackenzie: That would be useful, because it is one thing to say in response to a question that you have taken a look at the other jurisdictions, and then another to come back and tell us you have no hard figures, just the discussions you have had with them.

Dr. Wolfson: As I say, we will undertake to come back with whatever and as hard information as we can generate. This has been a problem for us as well, because we wanted to get our own estimates of the actuarial liability as precise as possible, but it is a difficult task because many of these systems, particularly the largest one of Quebec, have not been in operation long enough to have generated firm estimates.

Miss Martel: The Saskatchewan model would be in place since about 1979. We are looking at almost 10 years.

Dr. Wolfson: We can get the Saskatchewan information, although they have not done formal analyses. It is hard to do these kinds of before-and-after comparisons unless you organize the study very carefully. But we will get you whatever is available.

Mr. Chairman: Let's finish up the charts.

Dr. Wolfson: The final thing I would like to draw your attention to is that in addition to these costs, there are a number of other economic impacts of Bill 162. In particular, we think the transitional provisions would cost about \$50 million a year and the increase in the ceiling for temporary benefit recipients would cost another \$25 million a year. The effect of the ceiling on permanently disabled workers is already factored into these numbers. Finally, the costs of maintaining the employment benefits for a year is about \$25 million.

The total impact of the system is roughly equal. The new system, we project, will cost about \$835 million a year. The existing system costs about \$840 million a year and, therefore, it is roughly cost neutral.

It is worth pointing out, though, and I said I would answer the question earlier, how we fund the transitional provisions. There is another \$1 billion, as I indicated, associated with the transitional payments to existing pensioners, that increase of \$1 billion on the unfunded liability. That is funded by this \$50 million a year. Part of the transfer of this \$840 million—precisely \$50 million of it—goes to financing that \$1-billion liability over the stream it will be required for; namely, 20 or 30 years.

Mr. Chairman: Dr. Wolfson, you raise an interesting point on the unfunded liability. With the board actuary in the audience, I simply must ask this question. What is happening to the unfunded liability and what impact will Bill 162 have on the unfunded liability over, say, a 10-year period?

Dr. Wolfson: Why do I not take a crack and then the board actuary can keep me honest.

Mr. Chairman: We are running out of time, I know.

Dr. Wolfson: Our estimate is that since overall Bill 162 is cost neutral, it will have no impact on the unfunded liability over the long term. As you see, there is an increase in \$1 billion up front, but the reduced cost of \$50 million on other parts of the system over time take care of that increase in the unfunded liability. The program the board has established for retiring the unfunded liability over the next 25 years is basically on track and unaffected by the bill.

Hon. Mr. Sorbara: If I can just add to that, I have to reiterate once again that the design of the bill is for the purpose of making two fundamental changes to the system. In doing that, in the analysis that we did within the ministry and within government, we were thinking in terms of not having substantial impacts either way on cost to the system. If there were more time, the board chairman, vice-chairman and president would tell you about very significant other cost pressures within the board.

As far as Bill 162 is concerned, there are a lot of factors that

committee members should take into consideration such as, in the future, over the next 10- or 15-year history of the workers' compensation system in this province, how well are we going to do at vocational rehabilitation? How well are we going to do at reinstatement? How successful will the economy be in ensuring speedier reintegration of workers back into the economy?

It is difficult, without having a perfect vision of those elements, to assure employers, or workers for that matter, that this is a system that has no impact or a neutral impact on cost. All of those factors are out there, but the best projections, given the experience and the analysis that has been done by the ministry and the board, suggest cost neutrality. Frankly, I hope it costs less, because that means we will be doing a better job helping workers get back to work.

Mr. Chairman: As we sit today, what is the unfunded liability?

Dr. Wolfson: It is around \$7 billion.

Miss Martel: I have a short supplementary. I notice you have total Bill 162 costs here, showing of course that it is going to be revenue neutral. I am wondering about the increased rehabilitation costs which the minister has talked about that will arise out of the new provisions under Bill 162 and why they are not figured in here, which would throw off your figures a little bit, I would think.

Hon. Mr. Sorbara: If I could answer that, the analysis of cost neutrality was done on the basis of benefits in the hands of workers. We did not factor in, at that point, administrative costs.

Miss Martel: I am not talking about administrative costs. I am talking about costs associated with injured workers receiving rehabilitation.

Hon. Mr. Sorbara: I thought you were asking about the administrative costs of enhancing vocational rehabilitation, because that is what I had mentioned.

Dr. Wolfson: If I might try an answer to that, the reason I think those were not included is that we had already anticipated those in our vocational rehabilitation strategy, with or without the passage of the bill. We have made provision in our budgeting for those costs, because we think those expenditures will be effective.

Mr. Chairman: Okay. Mr. Dietsch had a procedural question.

Mr. Dietsch: First of all, is the board going to come back before us again?

Mr. Chairman: It is not scheduled to appear before us again.

Mr. Dietsch: Are there other questions relative to their presentation today? I have a couple and I just wonder whether other members do as well.

Mr. Chairman: I do not see any indication.

Miss Martel: Just one question, if I might help you out. I do not mind bringing the board back, providing we are going to allow every group that wants to come before us to appear.

Mr. Dietsch: I do not have a problem getting my questions answered. I guess the point I would like to raise is the procedural wrangle that took place at the beginning of the meeting, which did not allow the full questioning of what we wanted to do, and the time has elapsed.

Dr. Elgie: Mr. Chairman, I just want to let you and committee members know that we will have a senior board person here each day to assist with any questions members may wish to ask.

Mr. Chairman: Okay, thank you.

There is a steering committee meeting on Monday at 1 p.m. The clerk will inform the caucus as to where.

Thank you very much, Dr. Elgie and Dr. Wolfson, for appearing before the committee. We appreciate your thoughts.

The committee adjourned at 6:04 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

MONDAY, FEBRUARY 27, 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)
VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)
Black, Kenneth H. (Muskoka-Georgian Bay L)
Brown, Michael A. (Algoma-Manitoulin L)
Dietsch, Michael M. (St. Catharines-Brock L)
Grier, Ruth A. (Etobicoke-Lakeshore NDP)
Marland, Margaret (Mississauga South PC)
McGuigan, James F. (Essex-Kent L)
Stoner, Norah (Durham West L)
Tatham, Charlie (Oxford L)
Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Mackenzie, Bob (Hamilton East NDP) for Mr. Wildman
Martel, Shelley (Sudbury East NDP) for Mrs. Grier

Clerk: Mellor, Lynn

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

From the Motor Vehicle Manufacturers' Association:

Clark, Norman, President
Nantais, Mark, Executive Director, Committees
Thrasher, Rick, Supervisor of Group Insurance and Workers' Compensation,
Chrysler Canada Ltd.
Waechter, Bruce, Labour Relations Planning Manager, Ford Motor Co. of Canada,
Ltd.
Rodgers, Barb, Government Relations, General Motors of Canada Ltd.

From the Ontario Professional Fire Fighters Association:

Ferguson, Peter L., President
Fauteux, Joe, Chairman, Workers' Compensation Committee

From the Ontario Public Service Employees Union:

Upshaw, Fred, First Vice-President and Secretary-Treasurer
Stevens, Lillian, Co-ordinator, Membership Benefits
Gonestello, Orlando, Consultant

From the Ontario Trucking Association:

Bradley, David H., Assistant General Manager, Government and Public Affairs
Liversidge, Les, L. A. Liversidge and Associates

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, February 27, 1989

The committee met at 3:29 p.m. in room 151.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Mr. Chairman: The standing committee on resources development will come to order. We are here to hear representations concerning Bill 162, An Act to amend the Workers' Compensation Act. We will be hearing representations this afternoon, Wednesday afternoon and Thursday afternoon following question period, in this room every day.

Next week we begin to travel, which should excite members of the committee no end. I know it does Mrs. Marland. There is one thing I should point out to you. On your schedule for Wednesday, March 8, you will note that it says, "New meeting location to be announced," in Sudbury. We anticipate a problem there. We had planned to use the city council chamber, but we also think there may very well be a strike of municipal employees next week and I know members would not want to cross the picket line to hold such a meeting. We are in the process of trying to find another location for next—

Mr. Black: It might pare down the size of the committee.

Mr. Chairman: It would considerably pare down the size of the committee. We are trying to find another location for next Wednesday in Sudbury. I am sure we will be able to find some arrangement because Sudbury has many fine facilities. Any questions or problems on the—

Interjection.

Mr. Laughren: What date?

Clerk of the Committee: The rescheduling.

Mr. Laughren: Oh. Perhaps Lynn Mellor could speak to the rescheduling.

Clerk of the Committee: I have been attempting to reschedule the postponed hearings. I have not yet dealt with Hamilton and Oshawa, but tentatively we are looking at next Thursday and Friday. I am in the process of trying to have new flight arrangements and new meeting arrangements for Thunder Bay, Dryden and Fort Frances. I am running into a few problems, but we will fix it.

Mr. Tatham: Pardon me. Thursday or Friday next week: Is that what you are saying?

Clerk of the Committee: No, next week would be Sudbury, Timmins and Ottawa. It is the week of April 10 that I am trying to reschedule. I am sorry to confuse people. The week of April 3: It would be the Thursday and the

Friday of that week for Hamilton and Oshawa, but I have not yet determined where.

Mr. Chairman: Next week, assuming the Legislature adjourns this Thursday, we are in Toronto on Monday, then in Timmins on Tuesday, Sudbury Wednesday and Ottawa Thursday. That is the schedule. All right?

This afternoon we have four presentations, beginning with the Motor Vehicle Manufacturers' Association. I believe we have somebody here from that group. Mark Nantais, would you have a seat and make yourself comfortable, please, and introduce whoever is going to be with you? Welcome to the committee. We are glad you are here.

MOTOR VEHICLE MANUFACTURERS' ASSOCIATION

Mr. Clark: If I might, I will lead off. My name is Norman Clark. I am president of the Motor Vehicle Manufacturers' Association. If you agree, sir, what we would like to do today is split our brief representations into three parts. First, a small overview by me, then Mr. Nantais will introduce company representatives and comment more specifically regarding workers' compensation legislation and then we would be pleased to respond to any questions you or your members have.

The member companies of the Motor Vehicle Manufacturers' Association produced over 97 per cent of the nearly two million vehicles manufactured in Canada in 1988. Our members also support a broad network of parts producers, as well as other industry sectors such as tires, steel, glass, plastics producers, and services, including financial and scientific, to name just two.

It is important to note that the Motor Vehicle Manufacturers' Association members themselves also produce nearly half of the value of Canadian parts shipments, in addition to the completed vehicles they produce.

As part of a truly global industry, MVMA member companies face all of the present and foreseeable economic and social trends and challenges.

Mr. Dietsch: Mr. Clark, are you reading off a separate text from what you have handed out?

Mr. Clark: Sorry. Yes, I have copies here if you would like one.

Mr. Dietsch: I would prefer to follow along, if that is okay.

Mr. Chairman: Do you have the extra text there?

Mr. Clark: Yes. I am very nearly at the end.

Interjection: Short speech. Good.

Mr. Dietsch: Thank you, Mr. Clark.

Mr. Clark: You are welcome. Just below the halfway part on the page then, as part of a truly global industry, MVMA member companies face all of the present and foreseeable economic and social trends and challenges that there are.

As an industry, we must be competitive nationally and internationally. We must improve profitability to allow capital spending and training programs

to take place. We must maintain employment while increasing productivity. We must continue to improve employee-employer relationships, to adhere to principles of social responsibility, comply with legislative requirements and bargain effectively with unions. We must secure any available advantages from the Canada-US free trade agreement and retention of the auto pact, which was part of that arrangement.

The MVMA members are responding to global competition. Members of the Ontario Legislature and the government must also operate from that perspective in considering legislation needs, costs and priorities.

Mr. Nantais: To begin, let me say that while it was our intention to provide the committee with copies of our more detailed submission in advance, unfortunately that was not possible. They are, I believe, in your hands now. My verbal remarks are essentially excerpts from the more lengthy submission, but it does follow in sequence the one you have there.

At this time, I would like to introduce three representatives from our member companies who are much more conversant than I in matters of workers' compensation as applied within our industry: first, to my right, Rick Thrasher, supervisor of group insurance and workers' compensation, Chrysler Canada Ltd.; second, on my far left, Bruce Waechter, labour relations and planning manager, Ford Motor Company of Canada Ltd., and third, Barb Rogers, from the government relations staff of General Motors of Canada Ltd.

It is important the committee be aware of the context in which our member companies view health and safety in the workplace and its relationship to workers' compensation: As a number one priority, MVMA companies are committed to the reduction of work-related injuries and diseases by allocating large amounts of resources to worker health and safety education and training.

Our objective of providing the safest work environment possible is premised on the long-standing concept of the internal responsibility system where both employer and employee are equally accountable in health and safety. We have formalized this approach, through the co-operative efforts of both labour and management, in the structuring of very progressive collective agreements. These agreements deal specifically with accident prevention and programs leading to the return of the worker to the workplace at the earliest opportunity.

It is our view that the basic principles upon which workers' compensation was founded remain sound and are worthy of continued support. However, we are concerned that there is an erosion of many of the basic principles of the act and of the fiscal instability of the system itself, amid alarming increasing in employer costs.

Our member companies view the system with frustration, stemming from the impact of the legislation on the shop floor. We see some injured workers at home with after-tax incomes greater than they would receive if they were at work. We see cases with very questionable merits initially rejected by the board only to be approved at a later date through the appeals procedure. We see a seasonal pattern in claims that cannot be explained. Every June and July we have remarkable increases in new injuries necessitating injured employees' time away from the job over the summer. Similar increases are witnessed at prenegotiation time.

Most critically, we see much time, effort and resources expended on improving health and safety programs. Yet this action has no apparent impact

on member companies' workers' compensation experience. In fact, during the last eight years, when member companies have made significant progress in developing best-in-class health and safety programs by working jointly with the Canadian Auto Workers, workers' compensation assessment costs have increased as much as 384 per cent. At the same time, the consumer price index increased approximately 62 per cent.

With this perspective on the act, it is easy to become frustrated with this operation and cynical about prospects for effective reform. Reforms must promote swift, fair and efficient benefit administration, provide better treatment, rehabilitation and reinstatement opportunities for injured workers, and set the stage for a sustainable and affordable system. To be sustainable, the system cannot and should not remain static. It must continue to be responsive to the employer's ability to fund the system in a competitive business climate and to workers who are protected by and rely upon its financial security.

In any fundamental reform of the act, consideration must be given to the number of now available social programs not present when the workers' compensation system was established, principally unemployment insurance, universal medical and hospital coverage, company-sponsored pensions and other company or private insurance programs. These programs must be factored into the new workers' compensation equation.

With respect to the proposed amendments, member companies are in support of legislation that emphasizes the goal of helping injured workers return to the workforce earlier and more successfully. We are concerned, however, that Bill 162 will not be revenue neutral nor provide balanced input into the review process that would otherwise lead to a more efficient and equitable system.

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With regard to the dual-award system, the MVMA's support for a well-designed, dual-award system is in conjunction with progressive and early medical and vocational rehabilitation programs as well as mandatory reinstatement in the workplace where the same or similar pre-accident work exists.

With regard to noneconomic loss, in the instance where a worker has suffered a work-related permanent impairment, we are concerned about the responsibilities conferred upon the examining doctor. In conducting medical assessment of the extent of clinical impairment for the purpose of determining the amount of noneconomic loss, the examining physician is required to assess the injured worker "having regard to the existing and anticipated likely future consequences."

We submit that such a requirement extends beyond the determination of a clinical impairment rating and leaves the examining physician to, in quotes, crystal ball the future condition of the injured worker. Consequently, the rating schedule will be applied based on the physician's speculation, which in all probability will net the worst-case scenario. Subsection 45(5) must be amended so as to limit the clinical assessment to existing consequences and not require the examining physician to speculate about future possibilities.

The review process affords the worker and the employer an opportunity to appeal the validity of the worker's initial rating. In such cases, another medical examination may be conducted by a physician selected from a

government-appointed roster or one appointed by the Workers' Compensation Board. The MVMA believes that the establishment of a roster of medical practitioners must incorporate input from employers. As well, in deciding to request a review it is essential that employers and workers have access to the same medical assessment information. This would minimize employer-initiated reviews that would not have been launched had the employer been given access to the same information as the worker.

Subsection 45(13) permits the worker to apply for a reconsideration in respect of "a significant deterioration of condition." Member companies are concerned that employers may be held responsible for unanticipated deterioration, whether work-related or not. It is our view that the worker must not only prove a significant deterioration, but also establish a causal relationship between the deterioration and the original impairment arising from the work-related injury.

Just as the worker has the right to request a review of his or her deteriorating condition, so too must the employer have the right to request a review where the worker's condition significantly improves. Provisions should also be made available to employers for further review in suspected abuse situations.

With respect to compensation for loss of earning capacity, this aspect of the dual-award system goes some distance in addressing instances where workers continue to receive permanent disability pensions while suffering no loss of pre-injury earnings. It is directionally correct to provide permanent disability pensions that will ensure actual wage-loss replacement is afforded to the injured worker.

However, our members are concerned that the phrase "future loss of earnings" is too broadly worded if the intent is to compensate for ongoing quantifiable wage losses. We are equally concerned with the terminology under clause 45a(2)(b), "available employment." Such terminology insulates employees from labour market fluctuations and trends in type of employment. It is critical that employers be relieved of liabilities relating to a disabled worker's future employment problems, given fluctuations in labour market conditions and other factors that may influence a worker's interest in returning to the workforce.

In addition to subsection 45a(3) criteria for "determining the amount that a worker is able to earn in suitable and available employment," consideration must also be given to the injured worker's ongoing willingness to participate in rehabilitation programs and the stacking of benefits through private disability and insurance programs.

A benefit amounting to 90 per cent of net earnings can create a disincentive for employees to return to work, especially when the stacking of benefits, as noted above, is permitted. In some cases, the injured worker can actually realize a net gain in weekly salary by going on workers' compensation for a period of time.

With regard to vocational rehabilitation, the MVMA fully endorses a proposal that provides an injured worker with the opportunity for involvement in early medical and vocational rehabilitation. Numerous studies are available that clearly demonstrate that the longer the injured workers are out of the workforce, the less likely they will ever again be productive employees. In

fact, it is suggested that rehabilitation should begin immediately upon diagnosis of the injury.

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Many types of injuries require immediate rehabilitative procedures and cannot be postponed for 45 days or longer. Early mandatory rehabilitation is required and should ensure that all parties—employee, employer, attending physician and the WCB—are involved in the process. This type of involvement will guarantee that injured workers will return to full-time employment within their capabilities.

Unfortunately, there are a number of concerns associated with the proposed amendments in the area of vocational rehabilitation. They deal primarily with the ability of the Workers' Compensation Board to deliver the services described. To provide these services, the Workers' Compensation Board must be able to co-ordinate the activities of a number of different agencies which, unfortunately, may not always see their role as one of co-operation.

Reintegration of injured workers in the workplace: Motor Vehicle Manufacturers' Association member companies agree that the overriding objective of the workers' compensation system is to return injured workers to the workforce at the earliest opportunity. However, the obligations being placed on employers to reinstate injured workers raise serious questions in some industry sectors.

One point of concern respecting reintegration of injured workers relates to the penalty that may be imposed on employers under subsection 54b(5) should the re-employed worker be terminated within six months. The MVMA recommends this amendment be revised to expressly recognize employment terminations resulting from noninjury factors and include specific exclusions for just-cause dismissals and other factors such as plant downsizing and worker layoffs.

The majority of our members would support a provision that in effect allows an injured employee to displace another employee, provided the former would have eligibility to be at work.

Employers are presently at a disadvantage with the availability of very limited information respecting the injured worker's medical and physical limits in order to determine when an employee is able to return to work. We believe an injured employee must return to work at the earliest opportunity, with the employer and the worker being jointly responsible.

We therefore recommend, for the benefit of both parties, that when requested by the employer, the injured worker be required to submit to an independent medical review at the cost of the employer within one month of the workplace injury and on a three-month review schedule thereafter.

If it is determined by the independent medical physician that the worker is not totally disabled and is capable of modified work, the Workers' Compensation Board should undertake a review of the case to determine the status of compensation benefits. If modified work is deemed appropriate, the physician should be required to assist the employer by providing information respecting work limitations in order that the employer can seek out job tasks that are within the worker's physical capabilities.

Retirement income: The MVMA would endorse a plan that would supplement

an injured worker who suffers a true loss in pension income due to a compensable injury.

The pension payment determination should not be tied to wage-loss payments made to the employee. They should be paid only in the event the injured workers can demonstrate that they have suffered a true pension income loss. This section of the act should be amended to exclude contributions where the employee's pension income will not be affected by the compensable injury.

Earnings ceiling: The MVMA is very concerned about the proposed change to the earnings ceiling. This change requires an immediate increase from \$35,100 to \$40,000, and one year later, to 175 per cent of the average industrial wage.

A change of the magnitude proposed would impose a significant financial burden on many employers when combined with generally increasing assessment rates.

As an alternative, we suggest that a complete analysis of the impact of such a proposed increase and a ceiling on earnings be conducted. If after such study, an increase is deemed to be required, it should be phased in on a revenue-neutral basis over a longer period of time. This will allow those employers that are most affected to plan and prepare for this change.

In conclusion, subject to the foregoing, the MVMA supports legislation that emphasizes the goal of helping injured workers return to the workforce earlier and more successfully.

In addition to being responsive to workers who are protected by and rely upon the financial security of the system, it must also continue to be responsive to the employers' ability to fund the system in an ever-increasing competitive climate. This is a critical factor for employers who now face a multitude of legislative initiatives in Ontario. In combination, they adversely impact Ontario's industrial competitive position when compared to other jurisdictions, be it in other provinces or with the United States.

1550

Workers' compensation cannot be viewed in isolation from other initiatives restricting overtime scheduling, work refusal provisions under the Occupational Health and Safety Act, pension benefits or environmental regulations. All such initiatives increase the cost of doing business in this province. Legislative priorities must be established, along with reasonable implementation timetables, in order for industry to respond in an effective manner, especially at a time when the needed resources are scarce.

That concludes our verbal remarks. We would certainly be glad to answer any questions the members may have.

Mr. Chairman: Thank you, Mr. Nantais. Several members have indicated an interest in doing just that.

Mr. Black: First of all, I would like to thank the group for its presentation. I have two or three questions and I will try to be brief. They are basically questions of clarification.

On page 4, under the heading "Bill 162 Amendments," you are concerned, "that Bill 162 does not adequately recognize the cost implications for

employers or provide balanced input into the review process." Could you expand a little bit on the balanced input into the review process?

Mr. Nantais: If it pleases the committee, I would like to defer to my colleagues from the companies, who are much more conversant than I and have more practical experience in workers' compensation matters.

Mr. Thrasher: Will you ask your question again, please?

Mr. Black: On page 4, you make a comment, "that Bill 162 does not adequately recognize the cost implications for employers or provide balanced input into the review process." I wonder if you could be a little more specific on the question of balanced input into the review process.

Mr. Clark: The point I think we were trying to make was that right now our review process on a case is pretty much imbalanced in favour of the worker. For example, in the way of making information available to the employer, medical information and that sort of thing, there is not the ability now for an employer to gain the same access to information as the worker has. In Mr. Nantais' remarks, that came out verbally. It is as much informational, I think, as anything else, but it is just tipped too far away from the employer for our liking.

Mr. Black: And you feel there is nothing in the bill that would—

Mr. Clark: Pull it back? Right.

Mr. Black: On page 5, "The MVMA believes the establishment of a roster of medical practitioners must incorporate input from employers." I assume you would want input from employees' groups, as well as employers, in that?

Mr. Clark: Absolutely. This is one of the other imbalanced things, where there is already an opportunity for everyone but the employer to have impact on that roster or the decision about who reviews the case.

Mr. Black: My final question: On the same page, "Just as the worker has the right to request a review of his or her deteriorating condition, so too must the employer have the right." Do you see problems of an invasion of privacy in that?

Mr. Clark: It is certainly not anticipated that we would get into something like that. I think what we are looking for is that information which is not confidential or can at least be treated in a confidential way within the hearing or procedures that are established already for workers' compensation arrangements. I think there is a fair amount of confidentiality built into the system now. We will want that retained, but if there is an opportunity, again, for this imbalance to be remedied, we would be most grateful.

Mr. Chairman: Certainly, in view of the time constrictions, the committee appreciates the brevity of both the questions and the answers, because we are in a bit of a time bind.

Mrs. Marland: I certainly appreciate your saying that prior to my question, Mr. Chairman, but I will not take it personally.

On page 3, when you talk about some injured workers, etc., after-tax

incomes, that first paragraph, you actually—even the third paragraph, where you are talking about the seasonal pattern in June and July—do you have any numbers to back that up because those are very provocative statements?

Mr. Nantais: You will see in the written submission that there are two appendices. They relate to your question directly. Appendix A refers to the after-tax income as being greater, or being realized greater, than it would normally be realized.

Mrs. Marland: As you know, we just received this as you came in. I glanced at appendix A and I think it gave an example. What I am looking for is whether you have numbers that entitle those two statements to be made.

Mr. Nantais: Yes.

Mrs. Marland: If you have them, could the committee have them at a later date?

Mr. Nantais: Yes.

Mrs. Marland: You do not have to give them to me now, but as I say, they are very provocative statements so I would like to know if they are backed up.

Mr. Waechter: If you would take a look later at the last page, it shows the difference in the net increase, if you are looking for instances.

Mrs. Marland: If you make a statement like that, there have to be figures that substantiate it, in my opinion.

On page 10, in the third paragraph, you say, "The majority of our members would support a provision that in effect allows an injured junior employee to displace another employee, provided the former would have eligibility to be at work." That is very interesting. I just wondered if you could say something to explain the preference for juniors.

Mr. Thrasher: The problem in our collective agreement in both instances is that if we displace a senior employee in favour of a junior worker who is injured, then we have to find a job for that senior employee. If we are bringing in a junior person who by his seniority rights would not be entitled to be at work in the first place, then we have some very major problems with replacing those people on modified duties.

What we are talking about here essentially is if the junior worker had the ability to be at work, if his seniority provided for him to be at work, then yes, we would endorse this kind of position, but if his seniority did not entitle him to be at work, then we could not live with that.

Mr. Waechter: Maybe I can explain it further. Say we had a plant where we had 100 people who were laid off because of lack of work, so they are on layoff and there are the 100 junior people in the bargaining unit. If one of those employees had been injured and was now ready or could come back to work on modified work, we would not support bringing him back, causing him to bump out a more senior employee on to indefinite layoff.

Otherwise, we would suggest we bring the junior employee back and place him, even if it meant temporarily removing a more senior employee off his

operation on to another operation, but retain him at work so there would be no wage loss for either.

Miss Martel: I just want to have a supplementary on that. Will that not cause a great deal of problems on the shop floor, if you are displacing the senior workers who because of their years have probably got on to a little bit of a lighter job?

Maybe I will give you an example: underground who may now be on the surface. If you are going to have to displace these people in order to provide modified work, are you not (a) going to cause a lot of tension and (b) increase the likelihood of the senior people getting hurt because they will be doing jobs they may not have done for quite some time?

Mr. Waechter: I think the member companies have different procedures and interpretations of collective agreements on this subject matter. Many, several anyway, have provisions that allow them to bring a senior employee back and put him on a junior employee's operation. Others have provisions where, with mutual agreement, they can bring an employee back and put him on a junior or a more senior operator's job.

What we are in effect saying is that we support the government's initiative here of early rehabilitation, medical rehabilitation and vocational rehabilitation in getting the employee back, and getting him back even if it means temporarily putting him on a senior employee's operation. You would naturally find suitable work for the more senior employee.

Mr. Clark: But it certainly has to be worked out very carefully with the union.

Mrs. Marland: You talk about the Motor Vehicle Manufacturers' Association representing either directly or indirectly 500,000 workers. It is a very substantial organization. On page 13, you make a very substantial statement. You talk about a crucial factor for employers who now face a multitude of legislative initiatives in Ontario and you go on to talk about the competition compared to other jurisdictions, such as other provinces. Then further down you say, "All such initiatives increase the cost of doing business in this province."

Are you saying in that paragraph that there are legislative initiatives in Ontario that do not exist in other provinces and really do put you at a disadvantage in terms of doing business while protecting employees?

1600

Mr. Clark: Yes. My friend can wax eloquent on this one too, but if you look at the tax system, you will find it is higher than it is in Quebec. If you look at pension reform, Ontario seems to want to go towards indexation and no one else is of that mind. The environmental situation I will let Mark Nantais talk about. I think I would like to paraphrase what we said to several ministers at a meeting nearly a year ago now.

What we were saying was: "We do not really disagree with anything the government is trying to do. What we do have a problem with"—I think the government itself also has a problem with it—"is that there are so many things being floated at the same time with the same urgency and emphasis that we cannot address them all at the same time in the same time frame, and neither can you. What we want is some better setting of priorities and time

frames." I think that is really all any industry wants in the province: to be able to do those things that are for the benefit of the province on a priority basis and in time frames that are reasonable, and we are not getting that.

Mr. Chairman: I wonder if I might get back to you this time, Mrs. Marland, if we have gone around this time?

Mrs. Marland: Yes. The one final point was: Are there are major differences between Ontario and other provinces, and just briefly, could you throw out a couple?

Mr. Clark: There are major differences, but I think that if you look at each item discretely, it is small. If you add them up and put them into an aggregate, then I think we are in a position where—well, look at Toronto for an example. We are already seeing the results of extremely high inflation rates compared to the national average in housing, land prices and other prices. It is forcing out certain types of industry for the sake of others.

It is that type of thing the Treasury is trying to measure, and so are we through Mr. Kwinter's organization, the competitiveness of Ontario industry, particularly in our industry. When we get that report—we hope it will not be too many weeks or months away—then we will have a better idea of just how we stack up.

What happens now is that when a decision is being made, and they are being made daily, about where to locate another expansion or a new facility, whether it is in our industry or any other, Ontario is beginning to look a little awry, not necessarily because of the things that are already on the books, although they too are costly, but the things that are being broached and put forward in the way of legislation proposals amount to something, which is quite a hill to climb, and perception, as you know, is reality.

Mrs. Marland: Thank you.

Miss Martel: Page 7: I have a question concerning vocational rehabilitation. There has been some discussion in this committee, in questions with the minister, about the right of an injured worker to have mandatory rehabilitation. I notice you use the word "mandatory" in the second paragraph and I wonder if you can just clarify it. Do you mean workers have a right to that?

Mr. Thrasher: Early mandatory rehabilitation is one of the things that we have endorsed in the program and that we are supportive of because we feel that is the best way to get an employee back to work as quickly as possible. There is nothing we want more than good, productive employees.

Miss Martel: When you talk about rehabilitation, I am assuming you mean a full range of services; not just an assessment to see what the individual might need?

Mr. Thrasher: Yes.

Mr. Clark: I think it begins with the assessment, but goes on to use all those other services that are allied to it.

Miss Martel: Okay. I am just curious about that because the minister has said on more than one occasion that workers would abuse that right and use it to find a career change. It is something I disagreed with. I am actually

pleased you are saying it should be mandatory. It's funny where I find friends.

Mr. Nantais: Perhaps I may add one more point there. When we appeared before the Ontario Task Force on the Vocational Rehabilitation Services of the Workers' Compensation Board, we made the specific point that getting the worker back at the earliest opportunity is the absolute objective we want to achieve.

Mr. Waechter: I think that carries on both sides as far as the mandatory—at the time of diagnosis, prescribe the medical rehabilitation program for the individual.

Miss Martel: Thank you very much. I am sure my colleagues heard that.

Regarding page 6, I would like to ask a question about this stacking. In the same way I know you talked about appendix A, and some of those figures will be found there, do you have an actual number of cases that you have documented where stacking is occurring?

Mr. Nantais: No. We have not compiled a table such as that at this point in time, but we are aware of specific examples.

Mr. Clark: Along with those other data, perhaps we could undertake to get that information for you.

Miss Martel: I would appreciate that, because I find that somewhat provocative as well, so I would like to see the figures.

Finally, on page 4, I was a little bit concerned—I am probably very concerned—about paragraph 1, where you noted that consideration must be given to a number of other available social programs. If a worker gets hurt at work, why should it be that the rest of us would pay for that, through either unemployment insurance or welfare, for example?

Mr. Clark: That is kind of the cherry-picking syndrome again. I guess it has to do a little bit with the stacking or picking and choosing. Is the company's health and accident association the first or last in the list of available choices for an injured worker to pick up and recover some of his income?

We are very conscious of each of these things in discrete form, as well as on an aggregate basis. We think the unemployment insurance situation, for example, is not being used as was intended. We hope, as an example, that the federal government will revisit the Forget commission report and see if there is not something there—not that we want to do anybody out of what is legitimately there or needed, but that may not be the place where it should be funded, in our view.

I think what we are doing is using some of these programs for something other than what they were intended for, not that it should not be done, but not through that revenue source. Let's get back to basics for each of these programs and then we will have some additional accountability.

Miss Martel: At that point, the concern is more with stacking and not that if a worker is hurt at work, he should be shifted to another jurisdiction and not compensated first. Okay. Thank you.

Mr. Mackenzie: Basically, I would like to know what your bottom-line

position is. You raise a number of criticisms, but you also indicate support for the legislation. Is your association in support of Bill 162?

Mr. Clark: With changes.

Mr. Mackenzie: What about with no changes?

Mr. Clark: I would say probably not nearly as favourable towards it as we would be otherwise.

Mr. Mackenzie: It is not the degree of favourability. I am just wondering where you come down if there are no changes in most areas, as we think will be the case in this current bill.

Mr. Clark: I do not think so, but it seems more the administration of the situation.

Mr. Black: Is your association aware of some of the proposed amendments which the minister has already indicated he will be accepting?

Mr. Clark: We have not seen anything other than the bill.

Mr. Nantais: We are aware of this January 19—

Mr. Mackenzie: No, there have not been any since those.

Mr. Nantais: If that is what you were referring to, yes.

Mr. Black: Yes. You are aware of those.

Mr. Nantais: Yes, we are aware of them.

Mr. Black: Does that make your position more favourable towards the legislation or less favourable?

Mr. Nantais: I would say it is rather neutral.

Mr. Black: We wish our friends across the room were neutral sometimes.

Mr. Nantais: I do not think it has moved us one way or the other.

Mr. Chairman: Anything else, Mr. Mackenzie?

Mr. Mackenzie: Yes. My colleague has raised the top paragraph on page 4. It seems to me it does indicate a transfer of the costs on to the taxpayers generally or the public purse. At least, that is the way it comes through the way you have written it, but that is not a question that has been raised with you.

On page 5, the third paragraph, where you want some input from the employers in terms of a list of physicians or a roster, it is one of the areas that workers have also had a lot of dissatisfaction with. They have either the board doctors or a list of doctors appointed by the board. Would your association buy a change or a scrapping of the roster of doctors and have it replaced by doctors appointed maybe equally from labour and management as the second roster?

Mr. Clark: I do not see why not. That would make sense to us. It is in line with our recommendations.

Mr. Mackenzie: It might resolve the problems of the two groups if that were the case.

I think that is all for the moment.

Mr. Chairman: The final word goes to Mr. McGuigan.

Mr. McGuigan: On page 7, and it has already been alluded to, I want to zero in particularly on your statement, "Many types of injuries require immediate rehabilitative procedures and cannot be postponed for 45 days or longer." I wonder if you can perhaps give one or two examples of what you are referring to.

1610

Mr. Thrasher: There are certain studies that we are aware of, for example, saying that soft-tissue injuries to the back are more successful with immediate rehabilitation than the old prescribed rest and medication for two or three months. The actual fact is that after one or two days, if workers are disabled or not in active rehabilitation after that period of time, then it really does more harm not to be rehabilitated. Some soft-tissue injuries really require immediate rehabilitation, a rehabilitative type of activity.

Mr. McGuigan: Back strains would be an example.

Mr. Clark: Strains, yes. It sounds as if a sports type of injury would be an analogy here. You want them in the whirlpool immediately, that kind of thing.

Mr. McGuigan: After being bucked off a horse, get back on it right away.

Mr. Clark: Yes.

Mr. McGuigan: Falling off your motorcycle would be a better example.

Mr. Chairman: Thank you, Mr. McGuigan. Mr. Clark, thank you and your colleagues for coming before the committee. We appreciate it.

Mr. Clark: Thank you, Mr. Chairman.

Mr. Chairman: The next presentation is exhibit 10, to be followed closely by exhibit 11 from the Ontario Professional Fire Fighters Association. Are Mr. Ferguson and Mr. Fauteux here? Welcome to the committee, gentlemen. Members have the presentation in the top folder.

ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION

Mr. Ferguson: My name is Peter Ferguson. I am the president of the Ontario Professional Fire Fighters Association. Ours is an organization that represents full-time firefighters in Ontario. By the nature of our profession, we certainly have a great concern with anything that has to do with workers' compensation.

I am a full-time firefighter from the city of North York. I have been a

full-time firefighter for some 20 years. I am accompanied by Wayne DeMille, who is the secretary-treasurer of the Ontario Professional Fire Fighters Association and was a full-time firefighter in the city of Welland. Our spokesman this afternoon will be Joe Fauteux, who is a full-time firefighter in the city of Windsor. He is the chairman of the Ontario Professional Fire Fighters Association occupational health and safety committee. He is currently active as an advocate and represents injured firefighters at the various levels of the appeals procedure right up to the Workers' Compensation Appeals Tribunal. I will turn it over to our brother Fauteux at this time.

Mr. Fauteux: Thank you. Mr. Chairman and members of the panel, on behalf of the executive officers and indeed all of the members of the Ontario Professional Fire Fighters Association, we want to express our gratitude to you for allowing us to discuss some of the concerns that we have regarding the proposed legislation.

First, we want to make it perfectly clear that the Workers' Compensation Act is in need of revision. Anyone who has dealt with the Workers' Compensation Board on any kind of a regular basis recognizes that changes are imperative.

It certainly goes without saying that health and safety and workers' compensation are very important to firefighters in Ontario. When one looks at legislation regarding the Occupational Health and Safety Act, for example, one can see that under section 23 of that act, firefighters are excluded from some parts of it. We fear that under the proposed legislation of Bill 162, we as firefighters again might find ourselves being treated differently.

With respect to workers' compensation, there is no secret that firefighters can at any time be subjected to some very severe injuries and, all too often, death as a result of our chosen profession. In the last few months, one only has to recall the death of a firefighting captain in the city of Kitchener and a second horrible accident that happened here in Toronto in January 1989, while in training, of all places, that injured four firefighters and left them on life-support systems at the present time.

Firefighters in this province should be able to expect the best possible protection for themselves and their families should a very tragic situation happen to them as a result of only doing their job.

These comments or observations lead me to the areas of Bill 162 that I would like to make special note of today. I will address only the major concerns that affect firefighters. There are undoubtedly many concerns, both similar and different, of other workers in other sectors of employment in this province. I am quite certain that you will be hearing from the representatives of those particular workers as you continue your hearings across the province.

Allow me to begin my comments on Bill 162 and the new section that recognizes the responsibility of the employer to rehire an injured worker following a compensable accident. On the surface, this seems to be very admirable and one that workers would wholeheartedly agree with. However, when the matter is examined in a little bit more detail, one sees that there are several exclusions to this section of the proposed legislation. Not only are there exclusions now, but there is the provision that the list may be altered in the future. The fear that our association has is very simply that a municipality may attempt to have itself included in that list of exclusions.

Let's use a small municipality to illustrate the point. Let's use the

town of Kirkland Lake, Ontario, with its 12 full-time firefighters. I fear that some people from that town could possibly say that, as a corporation, they want to make the firefighters into one separate category of workers, apart from the other municipal employees.

If this sounds a little absurd to you, let me inform you of an incident that happened just last December. A firefighter from that very municipality had been very seriously injured in February 1988 and was being treated by specialists through McMaster University in Hamilton, Ontario, because of very severely burned lungs.

He was covered fully by workers' compensation and, miraculously, there was no difficulty with the board throughout the entire claim. He had been tested in September and was informed by the doctors that perhaps in January, after some final tests had been completed, he possibly would be able to return to full firefighting duties. Obviously, the man, who some eight months before was on the very verge of death, was ecstatic at the possibility of returning to his full-time employment and profession that he loved.

In spite of this information, the chief of that department, in the first part of December, by means of merely sending him a letter, attempted to terminate his employment and to do so simply because he had been on compensation for what the chief considered to be an unreasonable length of time.

You can see that with the attitude of some of the fire chiefs in this province, the concerns that we have are more than just idle conversations. Fortunately, this association was able to attend a meeting of the entire council of Kirkland Lake, and even more fortunately for the benefit of the injured worker, his dismissal by the chief had been overturned. The man is still recuperating and, hopefully, will be able to return to his employment as a firefighter in the very near future.

With situations such as this occurring, you can readily see the concerns of our association. The idea that our fire chiefs in this province are individuals in shining armour who have only the best interests of their firefighters at heart is simply not the case. In fact, more and more the chiefs of our departments are becoming administrators more than anything else. This is not necessarily the case with every chief in the province, but it appears to us that it is becoming more the rule than the exception.

What would have happened had that particular firefighter been in a group of less than 20 employees? The act would have been very specific in saying that there would not be any provision as the rest of the employees in the province would be covered; this particular group of employees would not be.

I believe that we are all being naïve if we suspect that lobbying for exemptions would not take place. We foresee the Workers' Compensation Board spending a great deal of its time discussing with employers the feasibility of becoming one of a longer list of exemptions under this section of the act. We further believe that there will be an outright attack to do so by both the Association of Municipalities of Ontario and the Ontario Association of Fire Chiefs.

We all know the tremendous delays that exist today in processing many of the claims before the board. This added responsibility would only add more delays and burdens to the existing staff. We believe one rule for all should be the only rule.

Another point to make regarding the proposals about returning employees to modified work or some other employment within the same fire department is that, according to the way I read the act, that particular employee can be dismissed after six months and one day if the employer feels it necessary. If we were to compare the proposed legislation to the Ontario Human Rights Code, the code says that every person has a right to equal treatment with respect to employment, without discrimination because of...and one of the items listed is handicap.

1620

A handicap under the Human Rights Code is defined under that legislation as "any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury." The code is very specific in addressing the fact that an injury or a disability for which benefits were claimed or received under the Workers' Compensation Act would be included. The Human Rights Code, in section 16, goes so far as to require employers to reasonably accommodate a worker's disability.

The question that this association would like answered is why it is that the Human Rights Code does not exempt workers of a construction industry or workers of firms of less than 20 employees and yet the proposed legislation under Bill 162 does exclude them. How can we have one piece of legislation that does not exclude a certain group of people, yet another piece of legislation that specifically does?

We cannot stress this point strongly enough. We do not believe it is so farfetched as to be unreasonable that municipalities would try to break down the large number of people that they have, in many instances, in order to reduce these groups or categories of people to less than 20. If that were the case, and if that lobbying were to be allowed, we would have a situation of many fire departments in the province that have less than 20 firefighters being excluded from this section of the act. That certainly is unfair.

It is also important to know that this section, along with other sections of the proposed legislation, is nonappealable to the Workers' Compensation Appeals Tribunal.

We all know the reason for the establishment of the appeals tribunal in the first place. Injured workers were forced to seek assistance outside the board to hear and settle disputes. It certainly is no secret to anyone that most injured workers, prior to WCAT being formed, had the impression—and probably rightfully so—that disputes within the board were, in essence, just rubber-stamped from one level of appeal to another. The formation of WCAT has at least caused many of these concerns to be eliminated, because now there is an outside mechanism for final appeal. Yet the Minister of Labour (Mr. Sorbara) has excluded WCAT from being able to settle disputes in this area, and others as well, under the proposed legislation.

A second issue that I wish to address today is that of the dual award pension system. Under the present system, an injured worker who suffers a permanent disability is granted a pension for life. Why? Simply because it is recognized that the disability, loss of use of a limb or damage to a particular part of a body, does not go away upon retirement. Why should a pension stop then? The lost limb certainly does not reappear. The pain, discomfort, limp or scarring does not recognize 65 as a particular age at which point the pain and distress would stop. The only thing that stops at age 65 is the monetary pension that was awarded because of the disability in the first place.

Again, what about us as firefighters? Nowhere in the act is there any special provision for us. Are we to be put into another category again? Are we to be dealt with differently again? Generally across the province, we as firefighters have a mandatory retirement age of 60. This age 60 retirement has been upheld by the Ontario Human Rights Commission as recently as 1987. We also have, under our Ontario municipal employees retirement system, the ability to retire prior to age 60.

Many unanswered questions about our special status with respect to retirement come forward. Again, let's use an example to illustrate our point. If I were receiving a permanent disability pension and retired from the fire department where I am employed at age 60, what would happen to the pension I was receiving from the Workers' Compensation Board? Would it be cut off because I was age 60 and other workers would still receive it until they were 65, which may be their normal retirement age? What if I retired prior to age 60—let's say at the age of 57? What happens in that situation for firefighters? Can I still receive the pension from the Workers' Compensation Board until age 65 even if I am retired?

If the answer to that is no, then am I not being penalized twice, because to take the Canada pension plan payments at age 60 instead of age 65 already reduces my CPP by one half of one per cent per month, up to 70 per cent? Even using age 60 as the year of retirement, I am only going to be able to receive 70 per cent CPP and I still do not understand from the act, and no one has been able to answer it for me, whether or not I would still be able to receive my workers' compensation disability pension.

If you think municipalities would not be lobbying in order to stop paying the disability pension immediately upon my retirement, regardless of age, we think you are sadly mistaken. At the present time, during rounds of negotiations that are currently under way, we are being hit by some municipalities with the whole idea of reducing the wages of a firefighter if he is working and receiving a pension from the Workers' Compensation Board.

Some municipalities, because they are schedule 2 employers under the act, want to reduce our wages as firefighters by an amount equal to the pension that is paid from the Workers' Compensation Board. If they want to do that now, while we are still employed and actively involved as firefighters in that municipality, certainly they would want to take these kinds of measures in order to stop that firefighter from receiving his disability pension from continuing the day he walks out the door under any kind of retirement plan.

In recent years, the Association of Municipalities of Ontario has made a concerted attack on the municipalities to encourage employers to attempt to erode some of the benefits we have enjoyed and freely negotiated for decades. The December 1988 bulletin from AMO has a list of recommendations that it encourages the municipalities to adopt. One of them is simply to attack the top-up provisions of our collective agreement as they pertain to workers' compensation benefits.

We are not suggesting this committee address itself to this issue, but merely point this fact out to you so that you have a clearer understanding of why we are so opposed to any legislation that is devoid of exact language and full of loopholes that we believe the employers will use for the sole purpose of reducing costs, without any regard for the injured workers from their own municipalities.

Because of the many inconsistencies and lack of tight regulations

suggested in this proposed legislation, we cannot help but be suspicious of the fact that the new legislation appears to be written for employers by employers.

One cannot help but wonder as well that a couple of things seem to be lacking from the proposed Bill 162. I would just like to take a moment of your time to comment on a couple of things that we, as firefighters, see that are not addressed by any of the legislation.

It certainly is no secret to anyone that heart and lung diseases among firefighters are a constant concern and a constant problem. The heart attack rate for firefighters is generally considered to be much higher because of the stress and the type of work we have to do at any specific moment of any specific day. It is not unrealistic for anyone who understands our job to realize that the stress, trauma and emotion we go through the moment the bells hit cause some sorts of problems to us.

It is our position that the Workers' Compensation Act should recognize heart and lung diseases as an occupational disease for all firefighters. These should be almost automatic to us, yet we have to fight case after case, every time a firefighter has a heart attack.

Believe it or not, we recently ended up before the Workers' Compensation Appeals Tribunal arguing a case that the compensation board had denied where a firefighter dropped dead of a heart attack in the middle of a house fire in the living room of that particular home, and his widow had been denied benefits. Ultimately, the Workers' Compensation Appeals Tribunal did grant benefits to that widow.

If it had not been for the mechanism of WCAT being in place, this widow still would not have received a single dollar from the board, yet the proposed legislation is drastically reducing the availability of workers to have a final say before WCAT in several sections of the new legislation.

1630

How can workers in this province expect to feel when they find out that sections of the act are virtually nonappealable to WCAT, when they demanded and received this right only four short years ago?

Another area that has not been addressed is an area that this association addressed to the Minister of Labour (Mr. Sorbara) just last year. We raised the issue before him and asked him to consider it because we knew the proposed changes to the legislation were forthcoming.

We questioned why, under the sections that were put in under Bill 101 a few years ago, the widow of an injured worker is entitled to all of the vocational rehabilitation services of the Workers' Compensation Board and yet the spouse of a seriously injured worker who, for all practical reasons, is unable to return to any type of gainful employment, would not be allowed the same type of services by means of vocational rehabilitation?

It appears to us that for a family to continue on and expect to have some sort of normalcy in its life after a severe accident that would take the breadwinner out of the working environment, and not allow the other spouse to have some sort of opportunity for vocational rehabilitation, as it would be if he had died, is not only unrealistic but borders on immoral. That type of service is allowed if he dies; however, if he becomes a quadriplegic it is not

allowed to his wife. It seems to me that his wife would be better off had he died. The lack of any reference to this type of issue, especially when it was recently put to Mr. Sorbara for consideration, is absolutely ridiculous.

Ladies and gentlemen, at the onset of my remarks this afternoon I agreed that the Workers' Compensation Act is in need of change. However, change has to be for the better. It is our position that the changes in this legislation would not only create a two-tiered system for injured workers, but would prove to be a bigger detriment than what they enjoy at present.

This association and its members strongly suggest that this entire bill be rejected and that some serious concerted effort be made to produce a piece of legislation that will not further harm the injured worker. We suggest the formation of a committee of all sectors directly involved with workers' compensation that would collectively sit down and draft fair legislation for both the employer and the employee.

We recognize the concerns our employers have over the spiralling costs of compensation, but yet we cannot forget the primary reason for workers' compensation in the first place: to provide a source of income for the worker and his family while he is unable to work because of an industrial accident or disease.

If it seems to be an impossible task to ever think of or imagine a group of people with different concerns coming together to produce a piece of legislation that is both fair and equitable, I would ask you to remember the workplace hazardous materials information system legislation, which came to be as a result of a concerted effort between government, industry and labour. If the WHMIS legislation can be produced in such a manner, why not workers' compensation legislation?

On behalf of the Ontario Professional Fire Fighters Association, our president, Mr. Ferguson, and all of our members, I want to thank you again for the opportunity of appearing here today. If there are any questions, I would certainly be willing to respond to them.

Mr. Chairman: Thank you, Mr. Fauteux. There are a couple of members who indicated an interest: Mrs. Marland and Mr. Tatham.

Mrs. Marland: Joe, I do not know if you wrote this, but it is excellent. Whoever is the author has certainly put your arguments very clearly and succinctly. I commend you for the content and the way it is written.

Being a representative for the city of Mississauga, of course I am a little biased about Chief Gord Bentley, and where you come down so hard on the fire chiefs around the province I have to exclude Chief Bentley, because I cannot imagine him operating in the way you are criticizing the chiefs of the departments.

However, you make a very serious point about the administrative role of fire chiefs versus the firefighters, and you talk about almost the autonomy of the fire chief in running his department. Because I was a city councillor in Mississauga for seven years and was involved from time to time with the responsibilities of that department when negotiations broke down and council was involved in meetings, I always felt it was ultimately the final responsibility.

When you talk about the possibility to dismiss a particular employee

after six months and a day if the employer felt it necessary, do the firefighters not see the municipality as the employer? The very fact you went to the council at Kirkland Lake and got that situation resolved seems to me to indicate you went to the council because it was the employer.

Mr. Fauteux: Certainly. I did comment in my brief that this is not the position of all fire chiefs. There are some excellent fire chiefs in this province. However, as I said, there seem to be a lot more going the other way.

Yes, the corporation of the municipality is our employer. There is no doubt about that. The particular case in Kirkland Lake, however, will show you that we have to be very careful because these kinds of things go on. It was the fire chief himself who for some unknown reason sent the man a letter and terminated his employment. When we did the appearance before council, there were members of council who were totally unaware of anything that had gone on in the week previous.

Mrs. Marland: Because the fire chief does the hiring and the firing, but those were special circumstances, so maybe municipalities have to be encouraged, where there are special extenuating circumstances, that there has to be at least an opportunity for intervention by the board of directors of that corporation, which is the elected council.

Mr. Fauteux: More and more of our fire chiefs are also becoming nothing more than administrators of those corporations. The days of fire chiefs who came up through the ranks—rode the backs of trucks, became drivers, became officers and were generally promoted through the entire system and worked for that city for a number of years, ultimately to obtain the rank of chief—are going by the wayside very quickly. The day is coming very soon when there will be a chief who is brought in who has never been on a fire truck and is made the chief of the department.

Mrs. Marland: Oh, really.

Mr. Fauteux: Those administration people are going to be our fire chiefs.

Mr. Ferguson: Just as a supplementary to that, I can give you three incidents that have happened recently with fire chiefs in Ontario. In the city of Etobicoke, the city of Scarborough and most recently in the city of Ottawa, the municipal corporations have hired fire chiefs from outside the municipality, which I think is a directive from AMO. This seems to be the trend. They are hiring management consultants and they are hiring people, from my point of view, who do not seem to be as feeling, as caring as an individual who, as Joe indicated, came through the ranks. This seems to be the trend within the fire service in Ontario.

Mrs. Marland: That would sound rather regressive from the standpoint that it is not exactly the kind of job you can imagine what it is like if you have not done it.

I think the point you make at the top of page 4 about the difference between the Human Rights Code and the 20-employee exemption under Bill 162 is an excellent point and it is one I will look forward to discussing with the committee when we come to our deliberations, because I think it is very valid.

Your whole presentation about the dual award pension system raises a lot of questions I am going to look forward to asking the minister since you said

you had not been able to get any answers. Certainly, we will raise those questions on your behalf. Obviously, the fact you have not been able to get an answer is significant, so we will find out what the answer is, because that is another important point you make.

I found it really interesting about the vocational rehabilitation and who was eligible for that in terms of whether at the moment it is only a widow and not a spouse of a very badly disabled firefighter.

1640

When you are talking about your job as a profession and how it relates to this bill today, in particular when you use the example of heart and lung disease, this question always comes up about the physical fitness of people in certain job categories. Firefighters and police officers have to be physically fit for their job because of the stress and the physical strain of the job, perhaps firefighters even more so than police officers.

Do you find that when you ask about compensation or recognition of the need for compensation where heart disease has been involved, you get into some kind of wrangle about physical fitness as a requirement of the job? Does that come into it?

Mr. Fauteux: Very often. The difficulty we have with some sort of mandatory physical fitness after years on the job is something very hard to explain unless you have actually lived it. I believe that in order to become a full-time firefighter in this province, the day you are hired on the job you have to be 110 per cent physically fit. You have to be that and I support that totally.

However, if you do your job and you do your job well, and you do your job for a number of years, your physical condition deteriorates. There is no way around it. Your back takes a beating. Your legs take a beating. Your heart, your lungs, your respiratory system all have to take a beating. The reason they take a beating, and the reason I, after 17 years on the job, could not pass a physical agility test to start the job—I could not pass that test today—is because I honestly believe I have done my job and I have done it well for the 17 years I have been there.

So you get into the whole concern of, will I be punished because I was doing my job in the first place and now I am in a position where I could not pass that test again? Where are you going to have the lines? How can we have a test that says, "Well, your back isn't perfect, so you are going to be out the door"? The reason my back is not perfect today is because for the last 17 years I have been doing my job. If I sat on the curb and never went in and did not do what I had to do, my back would still be perfect.

Mr. Chairman: I think we had better move on. Mr. Tatham?

Mr. Tatham: Nobody likes firemen until you have a fire and then you cannot get them soon enough. First of all, as far as workers' compensation is concerned, if somebody gets injured during a fire and he comes back to work, what really takes place? Where does one go? What kind of work can one do?

Mr. Fauteux: Most of our fire chiefs, or most of our municipalities will tell you that you are either a firefighter or you are not. That is the problem we have. We have large municipal departments, some municipal departments having 600 firefighters. But a lot of our departments are small

and all they have are firefighters. In my particular department, we have about 275 people who work for the Windsor fire department.

If a firefighter were to be injured to the point where he could not return to being a firefighter, riding the back of a truck, fortunately we have a few other divisions such as the alarm room or dispatch, and maybe fire prevention. There are a couple of other areas someone potentially, if all things were right, could move into for a short period of time.

Mr. Tatham: Do they get paid the same kind of money when they go into an alarm room?

Mr. Fauteux: Again, that is at the whim of the employer. At the present time, not necessarily, no.

But in the smaller departments, all you have are X number of people who are all firefighters. You are either a firefighter or you are not.

Mr. Tatham: I see on the last page that you reject the bill. My understanding is that Saskatchewan has the same type of operation. Have you checked with them at all to see what they do out there?

Mr. Fauteux: No, I have not, sir.

Mr. Tatham: That might be something. I understand it has had the same type of an award system for about nine or 10 years and you might see how successful it has been.

Mr. Black: On the surface, the dual award system would appear to more adequately compensate injured workers than the present system, but I gather from your brief that you do not share that view. Is that correct?

Mr. Fauteux: That is correct.

Mr. Black: Can you be more specific and tell me in what way it does not adequately compensate for economic loss?

Mr. Fauteux: I believe it is the part of the pension that is going to stop when you reach age 65. A pension is paid for a disability. The way I see it, that disability is there and it is probably there for life. Why it stops at age 65 because you retire is beyond me.

If you have a disability, the disability is not something that is just at work. The disability goes home with you. The disability is for all aspects of your life, which includes work. When you retire, the disability is still there, even though you are not working. I believe the pension system that is in existence today, which pays you for that disability for the rest of your natural life, should be maintained.

Mr. Black: If I can just follow up on that, if I go to page 8, which is right at the end of your presentation, in the first paragraph on that page you say, "We cannot forget the primary reason for workers' compensation in the first place—to provide a source of income for the worker...while he is unable to work."

What crosses my mind is whether we are then looking for another purpose for workers' compensation, which is not to protect the worker during the time he is unable to work, but to provide compensation for life for some kind of

injury that is sustained in the workplace. Is there a difference there or am I misunderstanding your position?

Mr. Fauteux: Maybe it is a bad choice of one word in the brief for the primary concern. Certainly, the formation of the Workers' Compensation Act, the way I understand it, when it was first put into place, was for that. It goes beyond that as well, though. It has vocational rehabilitation parts put into it and it has spousal benefits put in for death. So it is not just for work; it is for a whole lot of other things as well. Spousal benefits for a widow continue on and there are provisions in there for children and everything else, right on through.

The primary purpose of it, yes, is that if you get injured at work, you are entitled to benefits under the Workers' Compensation Act. Under the present system, if you are injured severely enough at work, you are entitled to a benefit from the system. You are entitled to the wages or provisions of payment under the act and also possibly a pension under the act, that pension at the present time continuing on for the rest of your natural life.

Mr. Black: Your preference, then, would be to continue the present system of workers' compensation?

Mr. Fauteux: I believe there are a number of changes that need to be addressed in the Workers' Compensation Act. I do not like Bill 162 or the proposed amendments to Bill 162. I believe, as I say in the final argument or the final part of the thing, that we need changes to the act, but we need to sit down collectively together and address them all.

We need to address them as employers. Employers have some very valid concerns. Their costs, as these figures before us indicate, have skyrocketed ridiculously. I agree and I share the concerns of the employers, but I have a great deal of concern for injured workers and the rights of injured workers and their families to continue some sort of normalcy after an accident, particularly a severe accident, something that is very demeaning and crippling.

Mr. Mackenzie: I have three quick points. First, in my town, I think people like firemen even before they have a fire. I would like to say that while I have a lot of criticism of the bill, I really think you probably do not have a worry in terms of 60 or 57 as early retirement. I think it is fairly clear on 65, but we will take a good look at that particular section.

I noticed your arguments on 20 employees or less. When we hear from the human rights people, we are probably going to get a verification of exactly the point you are making there. I suppose one of the ways, at least for municipal employees, in which we could resolve this very quickly would be to have all the employees in a municipality, regardless of the category they are in, covered as employees of one town or corporation. There would not then be the fear of hiving off 10 or 12 firemen. It is a minor point maybe, but one we might take a look at.

There is another point that I think is useful, given the questions my colleague Mr. Black was asking as well. I am glad you noted that for the first time since either 1915 or 1916—I am not sure when; I think it is 1915—an injured worker will no longer have a pension for life in Ontario.

1650

Mr. Chairman: We will leave the final question to Mr. Dietsch.

Mr. Dietsch: Mr. Mackenzie touched on this: As I understood it, your fear with respect to the 20 employees is that municipalities will look at breaking out individual departments, breaking out parts of the municipalities to escape with the under 20 employees. Is that really your major concern there?

Mr. Fauteux: I believe what may happen is they would break them down into individual bargaining units, where you would have the firefighters' bargaining unit, the police officers' bargaining unit, the inside workers' and the outside workers' bargaining units. If you had a municipality, for instance, that had 100 employees and maybe five different bargaining units, each one of those bargaining units could now be considered a separate entity or whatever.

The way the proposed legislation reads to me is that somebody could be added to that list. If you have fewer than 20, you are automatically on the list. If you were down to fewer than 20, you could say that all of the people in this bargaining unit and all of the people in that bargaining unit, although they have the same employer, are two separate categories or two separate entities, and therefore that these are exempt and those are exempt even though they have the same employer.

The suggestion is that it be one employer and then it covers everybody. If that was very specific in the legislation, then that would probably solve that concern.

Mr. Chairman: Mr. Fauteux, thank you very much to you and your colleagues for coming before the committee. We appreciate it.

Mr. Fauteux: Thank you very much.

Mr. Chairman: Good luck.

The next presentation is from the Ontario Public Service Employees Union. I believe Viki Scott is going to make the presentation—is that correct?—or Fred Upshaw; whoever. Would you make yourselves comfortable and introduce your crew, please.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Mr. Upshaw: My name is Fred Upshaw. I am the vice-president and treasurer of the Ontario Public Service Employees Union. I have with me today Lillian Stevens from our staff who would be pleased to answer any of the technical questions you may have, and Orlando Guonestello who works for an injured workers' consultant.

I would like to start out by stating that my profession is a registered nurse. For many years, I worked at Whitby Psychiatric Hospital. Having done that, I have experienced the role of a front-line worker in a psychiatric hospital where I have seen many of my fellow workers injured while performing their jobs. They are not injured based on the fact of ignorance with respect to safety, but they are injured because of the fact they have been attacked by patients. I have been attacked with chairs. I have been attacked by a patient coming at me with a knife. In fact, I have been attacked by patients coming at

me with a sword, pool cues, throwing of billiard balls at me and it goes on and on.

Because of my profession, my job is to look out for those less fortunate and we do not place the blame on these patients for their actions and their aggressiveness. One wonders, as the years progress, whether or not this is the day when you are going to be injured while performing your duty. In fact, in order to stop a patient from stabbing a member of staff, I had my ankle broken in the process of just trying to protect another staff member.

But I am not here today just to speak with respect to the nurses on the front line who work in psychiatric hospitals. In fact, I am here today on behalf of 100,000 public service workers represented by OPSEU.

Our members take a keen interest in this bill. We are the worker advocates and legal clinic workers who take cases forward to the Workers' Compensation Board. We are the health and safety inspectors. We are the people subject to violent assaults in jails and institutions, to chronic back injuries in hospitals and ambulance services and to chronic health problems in the modern high-tech offices of today. We know the need for sound workers' compensation, the need for a system that promotes health and safety by forcing employers to absorb the real cost of injuries by giving them the incentive to clean up their act, by promoting dignity and security for the workers who have been injured.

On both grounds, Bill 162 falls short. That is why we call on the government to withdraw the bill and launch a new process that will lead to genuine reform of workers' compensation.

Workers' compensation can promote healthy and safe workplaces in two ways. It can charge employers for the full cost of injuries, thus providing an incentive to introduce better preventive measures, and it can define "accident" in such a way as to emphasize the chronic injuries and health problems that are driving our health costs today.

Bill 162 does neither. It reduces the employer's cost for workers' compensation. Benefits are only paid out when disability leads to wage loss. There is no sense of taking the worker off the job before the injury causes irreversible harm. Employers are liable to cover benefits—a major portion of public sector net wages and a substitute for higher wages—only for a year. Employers are under no obligation to provide retraining or adjust their procedures to accommodate injured workers. The major beneficiaries of the proposed wage-loss system are employers, who will be paying out less to the WCB than they did for the old pension system based on the meat chart.

At the same time, Bill 162 reduces the rights and benefits of injured workers. The proposed wage-loss system puts workers under the thumb of the WCB and denies them a guaranteed lifetime pension. There is no right to vocational rehabilitation. There is no genuine right to reinstatement.

I have documented these allegations in detail in my written brief. In the short time available to me now, I will focus on a few examples to make my point.

As long as employers are screaming bloody murder about compensation costs, we have a fighting chance to show them an alternative to the actual murders that are taking place in the workplace.

Look at your own record as employers. It has been documented by Coopers and Lybrand Consulting Group in a report called *Wellness in the Workplace*. It reports that only three ministries have safety policies. In high-risk ministries, few resources are spent on health and safety. Training is either sporadic or nonexistent, the report says.

To turn this around, we need stronger health and safety laws and higher WCB costs than now. It is the only language employers understand. Instead, Bill 162 reduces employer costs to make up for injuries. As long as that is true, we will be fighting uphill to improve matters.

1700

Let me give you some examples of how we will be fighting uphill. First in the area of reinstatement, one of the promised reforms of the new bill, instead of offering genuine reinstatement rights, Bill 162 is weaker than the Human Rights Code. It exempts employers with less than 20 employees. That means workers in the dangerous tree nurseries that are being contracted out by this government. That means ambulance operators in the privatized services. That means youth workers in privatized young offenders' centres. Those are workers who need reinstatement rights most and yet they are exempted right off the top, an exemption not allowed under the Human Rights Code.

In our ambulance services, psychiatric hospitals and jails, severe injuries are a way of life. The human back cannot take the weight of ambulance work much past the age of 40. The body cannot always recover from the assaults of inmates.

Instead of paying tribute to these people and the injuries they suffer, this bill gives employers all the loopholes they need to avoid an obligation to rehire. The employer only has to offer the first available and suitable job, and then only for six months. Those employers refuse to admit that there are any jobs for anyone disabled by an injury. "There is no work for a nurse with a bad back," they say. "No work for a correctional officer. No work for an ambulance operator. Either bring your whole, healthy body or don't show up." That is how they see it.

Unless the law requires employers to make adjustments to work procedures, any right to reinstatement is a dead letter to workers in dangerous occupations, who need it most. The Human Rights Code requires employers to make those adjustments. Bill 162 does not.

Let's take a look at another section of the bill, dealing with the elimination of the guaranteed pension and its replacement by a so-called wage-loss system. Under this system, the Workers' Compensation Board defines suitable and available work for the injured worker. There are no safeguards against WCB errors. The worker does not have to get the job the WCB says is suitable and available. The worker does not have to live in the immediate area where the job is supposedly available and suitable. No account is given to discrimination injured workers may face or to the possibility that the injury may deteriorate or recur.

We have already had one ludicrous example of how this bill will be applied, even before Bill 162 has become law. A worker in the Huronia facility in Orillia injured her back in 1970. In 1987, she went to the hospital for corrective surgery, which did not succeed. In December 1988, under the new get tough rules of the WCB, she was told to report for light duties. She is 70

years old. Those are the kinds of errors that get made when the WCB bureaucracy gets as headstrong as it gets under the new law.

From the decisions made by the board in the last few years; we have every reason to believe that the proposed wage-loss system will be nothing other than bureaucratic voodoo, where the board slots workers into imaginary jobs that the board considers suitable and available.

The section on reinstatement denies any employer obligation to rehire, supposedly because it is too hard on the employer, but it has no hesitation in saying that the same worker will have no trouble getting another job it defines as available.

This is nothing less than a double standard that puts the burden on the victims, not on the perpetrators of workplace injuries. That is what wage loss really means. The injured worker will be facing the wage loss, not the board or the employer.

Our union is outraged at the age discrimination built into Bill 162. We are outraged that a worker over the age of 55 can be denied rehabilitation rights by the board and put on a pension equivalent to old age security, which is \$314 a month. Many chronic injuries that build up over years of abuse and unsafe practices do not strike workers until they get to their fifties. That is true of backs, hearing loss and stress especially. Those are the workers who can get thrown out on the scrapheap by this bill.

We are outraged that the board will deduct \$1,000 a year for noneconomic loss awards to workers over 45. By what authority does the board get to say that an older worker suffers less than a younger worker? Is this not a reflection of the government's acceptance of prejudices against the elderly?

We will not accept this. If this bill is rammed through with this kind of blatant discrimination, we will launch court action under the Charter of Rights to have the bill thrown out. We do not accept discrimination on the basis of age, any more than we accept discrimination on the basis of race or creed or sex, and we will face you down to the end if you use your majority to ram this bill through.

I said in my introduction that our union has special expertise in the handling of WCB cases, because we represent the advocates under this system. We know about the backlog of aggrieved workers, still two years, at the office of the worker adviser, and we know the kinds of problems injured workers face dealing with a hostile and impersonal bureaucracy.

We know all the problems with the present system, though for a reason that defies imagination, we were never consulted as to any changes. Had we been consulted, not just on the content but on the form of the bill, we would have made two points: keep the language clear and lay all the cards on the table. Both are necessary for any bill that meets the needs of injured workers.

Instead, we get the opposite. It takes a lawyer to figure out what the bill means. Whenever it refers to an obligation of an injured workers, it says "shall." Whenever it refers to an obligation of the employer or WCB, it says "may." Virtually none of the terms used by Bill 162 are defined in the legislation. They will be defined later by regulation.

There are two major problems here. First, workers are denied one manual that spells out their rights. Instead, they are left shadowboxing, trying to

figure out how the WCB will define their situation and in what set of regulations. Second, the whole setup is antidemocratic. We are being asked to sign a blank cheque, and we are being asked to allow the WCB, already a law unto itself, to make up the rules as it goes along.

1710

The WCB has the power to initiate regulations, and the regulations will be passed without scrutiny by the Workers' Compensation Appeals Tribunal or the Legislature. On the grounds of democracy alone, on the grounds of insisting on accountability from public bodies, we oppose this move.

Unfortunately, this bill is so flawed that it cannot be improved short of a major rewrite. The government will be very shortsighted to pass it because we will tie you up with legal cases and charges under the Human Rights Code and the Charter of Rights until you start listening to us. Workers will bypass the board and use the Human Rights Code.

We ask the government to avoid this kind of conflict and mess by withdrawing the bill. Then the government can launch a new process that includes injured workers and the representatives of workers who stand to be injured in a new draft. That would mean no loss of face on the government's part but a serious commitment to do something at last to fix up a system that is hurting injured workers as much as their original injury.

We would certainly be pleased to answer any questions.

Mr. Chairman: I think in view of the directness of your presentation, there will be questions.

Mr. Mackenzie: First, there has already been some indication of the clarity of the bill in a number of smaller points that were raised by my colleague with the minister himself in the course of the hearings last week. As I remember it, on at least three occasions, two very specifically, there was an admission from the minister that there might have to be a clarification in terms of the wording that is in the legislation. So I think you are hitting on one of the problems in the legislation.

I just have one thing that I would request. My colleague has a number of specific questions that she wants to ask, but your union has developed tremendously in the last 10 years in the province and has some of the better and more competent research people available. I think most of the labour movement is aware of that.

I know your feeling on this bill as well, and the extent of your opposition to it. If your people can take a look at answers that are coming from the government, from officials from the board and from the minister himself when specific questions are asked and that would require a bit of work, possibly going over the Hansards here, and then get back to this committee collectively with your comments as to the answers or defences that are given us by the minister, I think that would be useful over the course of the next few weeks.

There are some issues we are raising that are not being answered but there are others where we do not agree with the answers. I would just like to have the response from your research people, if you can monitor the Hansards and the answers to specific questions.

Mr. Upshaw: We certainly would be pleased to have our research department do just that. We welcome that as a matter of fact.

Mr. Tatham: I certainly appreciate your comments. I asked this question about the firefighters; I understand that Saskatchewan has done something similar to this proposed amendment to the Workers' Compensation Act. Have you looked at that at all? Have you tried to find out what their performance has been, how satisfactory or unsatisfactory it is out there?

Ms. Stevens: Yes, we have. I am waiting for direct evidence, like reports, from them. However, their wording is not quite the same as ours, so it opens the door for an argument to be made that somehow theirs is different. But I am getting that evidence and I will be pleased to pass it to the committee as I obtain it.

Mr. Guonestello: Looking at Saskatchewan is important, but I think we already have evidence on Ontario. As you may know, the Workers' Compensation Board has recently changed the supplementary subsection 45(5) and it uses "deeming." The words in subsection 45(5) are "suitable" and "available" work. They are very similar to the deeming provisions of Bill 162.

There are horror stories about the current practice of deeming. As our brief says, workers are not required to have really suitable and available work, they are deemed in an imaginary fashion. The horror stories already exist in Ontario right now, and while the Saskatchewan experience is going to enlighten us, we already have lots of evidence from Ontario.

Mr. Tatham: Are you folks happy with the bill as it is now, with the Workers' Compensation Act?

Ms. Stevens: Absolutely no. We were making proposals a long time ago to change that. This bill is unacceptable, but certainly we were fighting to change the one as it was. I think that is a very important part, that we cannot get locked into just changing this bill. There is a need to change the whole thing.

Mr. Tatham: You think the whole thing should be thrown out, is that it? You do not accept it at all?

Ms. Stevens: We need to have input and a good process in which a bill can be developed which will assist our injured workers and provide the best possible treatment. The new bill was supposed to undo the wrongs of the old, so not only do we want this bill out, we want to be part and have input into developing a bill that actually operates to the benefit of our injured workers.

Mr. Tatham: Let's go back to basics. Is the concept of this two-pronged, two-armed system right or wrong, in your view?

Mr. Guonestello: I am sorry. I do not—

Mr. Tatham: Is the concept of looking after the difference in wages and also the injury itself a good concept?

Mr. Guonestello: Wage loss is a good concept.

Mr. Tatham: Is the dual award system—

Mr. Guonestello: There is one myth here, and it is that we are moving from a single to a dual award system. There is a dual award system in practice now. It is made up by the pension, the permanent disability award for life, and by the supplement.

The change here is that the relative importance of these two components is now changed. The obligatory part right now, the one that is guaranteed, the pension, is going to be less important in the new system and the wage loss is going to become more important.

It is very important for your constituents. They come to you for assistance, and you know they are already very worried about the system because the pension is small; but in the new system, what is going to be the pension is going to be even smaller. That is the problem. There is less guarantee in the new system, so we are going from bad to worse.

Mr. Tatham: If a person was making, say, for the sake of argument, \$15,000 a year and he would only make, say, \$10,000, and if that difference is made up by the board, does that not make sense?

Mr. Guonestello: Yes, it does, and it can be done under the current system. There is a wage-loss provision under the current system which has recently been cut back by the board. The present system could do the job of paying proper wage loss, but what has happened is that the board is cutting back under the current policy and we have a law that makes it worse. We are going from bad to worse. It is very bad for injured workers.

Mr. Black: It is always good to see Mr. Upshaw. He has one problem: He is often not direct enough. He does not really let us know how he feels about anything. Fred, I want you to remember that when I assaulted you last time, it was not with any kinds of weapons, but with words.

Mr. Mackenzie: He wants to know if you are listening.

Mr. Black: I am tempted to be facetious and ask a lot of questions, but I will be serious for a minute. You find the bill in its present form distasteful, I gather.

Mr. Upshaw: I would think so.

Mr. Black: You make a suggestion that we should withdraw the bill and redraft, having workers and representatives of workers redraft new legislation.

Mr. Upshaw: Absolutely.

Mr. Black: I assume there was an error in your brief, that you would also include the employers in that redrafting, you would recognize their right to have a voice in the whole thing, since they pay a good portion of the costs?

Mr. Upshaw: It would certainly be all right to have them as part of it, sure; let's be reasonable. But the main thing is that the people affected should have a say in how it should be drafted.

Mr. Black: I guess the last question is that I want to know if that 70-year-old worker at Huronia Regional Centre did go back to work on lighter duty. Thank you.

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Miss Martel: I have a couple of questions. I will try and be brief. Mr. Guonestello, can you go through, please, for me what exactly deeming is? I mean, what is happening under the present system? You will appreciate that some of us here do understand workers' compensation and some of us do not deal with it as much. Can you be a little bit clearer about what that entails and how the present system is working?

Mr. Guonestello: Okay. I gave a few examples at a meeting a few nights ago, where Henry McDonald was present. Henry McDonald from the board is here with us today.

I have the example of a worker, on 10 per cent pension, who could not return to the factory job that he had as a steelworker and went back to the board and asked for a supplement. Clearly, he had no job and there was a huge wage loss, and the board can pay a supplement in those cases.

In the previous system, he could have qualified for a pension supplement; but now, after these cutbacks that we were talking about, he was told, since he had taken a night course at George Brown College in refrigeration maintenance—of course, he did not finish this course and he never worked as a repairman: "Wait a minute. We can deem you. We are going to deem you to be able to perform this work." So they called Statistics Canada, they were told that a refrigerator repairperson can make so much a week, and they said: "Look, there is no difference. Therefore, we deem you not to have passed the threshold test."

So the short end of this story is that a worker with an incredible amount of wage loss is receiving nothing because of this deeming. This is fantasy land, and unfortunately it is a very sad one. This is what may well happen and is going to happen with Bill 162 with the deeming that is going to take place.

Mr. Chairman: Is that where the expression "deemed if you do and deemed if you don't" came from?

Mr. Guonestello: I think so.

Mr. Chairman: I see.

Miss Martel: Just as a supplement to that, can I ask if you see anything in this bill that makes it any different, that changes the present system and provides some safeguards against that happening?

Mr. Guonestello: There is nothing whatsoever. Deeming is done under subsection 45(5) and the words there are "suitable" and "available" work. In fact, subsection 45(5) has stronger wording: "available for employment which is available," and they do this kind of deeming. Just imagine what they would do when "available" is only mentioned once in Bill 162. That is no security at all; those words are no safeguard at all.

Mr. Black: Is the fault then in the system or in the way the system is being implemented and administered?

Mr. Guonestello: It is both. You have an institution that workers do

not trust, as you well know, and you have a system that gives such an institution so much power. So I think it would have to be both.

Mr. Black: I guess I did not make my question clear. That may not be a fault of the legislation per se. It may be a fault of the people who interpret and administer the legislation, if indeed there is fault.

Mr. Guonestello: If you look at the transcripts from the last hearings in 1982-83, I think Bill Wrye said then that the way to get around it is to define every term to make it very clear. He was not happy with the word "suitable" left undefined, nor was he happy with the word "available" left undefined. I think the same argument occurs and applies today. We have to tie the system down; otherwise, discretion will take over.

Miss Martel: I have a question on rehabilitation, Ms. Stevens. I am assuming that you have some statistics for your workers about rehabilitation. Can you tell me what the general feeling of your members is concerning access to rehabilitation services and how adequate those would be presently?

Ms. Stevens: At the present time, most of our people have great difficulty in obtaining rehabilitation under the present system. They have to go through a great deal of trial and error on that. More people in the government workers alone have contract negotiations that give them some more entitlements than some of our other members. Under the future, they will be denied that rehabilitation.

A large number of our people are highly skilled. They have a higher wage level. They meet a large number of the criteria you would find in an occupational title book. Therefore, the right to rehabilitation would probably be denied because they would meet the deeming process that Orlando just mentioned. They would therefore be denied the wage loss and the retraining.

However, when you look at the kinds of jobs we have and the kinds of classifications that we cover in jobs—because we have also firefighters in the forests in the summertime, the ambulance drivers, the correctional officers, the nurses, highly skilled areas that we seem to forget—we have a vast number of clerical workers who are suffering a great deal from stress and carpal tunnel syndrome, but their qualifications will deem them to meet jobs that they never had, that they would be employed in or that would be available to them, so the potential of rehabilitation has been lost for our membership.

Miss Martel: Under the present bill, if you leave deeming aside completely under the present wording of the bill, where rehabilitation is not an obligation on the board, do you think the board, in its wisdom, is going to provide that or do you see some serious flaws in the fact that rehabilitation is not a right?

Ms. Stevens: I see serious flaws. One of the points that Fred brought up in his remarks to you was the fact that, as our people get older in the very stressful jobs that we just mentioned, their injuries will come out full blown, in their fifties approximately, so I see the opportunities for change and rehabilitation and even re-employment at a loss at 55, because of the new proposal that they have the option of either retraining them or giving them a pension of \$314. I guess it is now \$323 because of inflation.

So our people, at 55, are going to be looking at a pension and a loss of career while they still have families to support, because once again, our high-salaried or salaried people have taken a great interest in their careers

and they are in highly skilled and highly trained areas which are very specialized. For instance, our ambulance workers are under the 20-person employer. There is no opportunity for retraining or mandatory return to work.

It is not just them. That goes throughout all our system, including our correctional officers. We have general statements too. There is no modified work available in the Ministry of Correctional Services.

Miss Martel: I have just one final, very short question on the terms of the reinstatement, now that you mention that. Do you have any sense of numbers? How many people in the Ontario Public Service Employees Union would not be covered because they are in workplaces of less than 20 employees?

Ms. Stevens: Less than 20? I can tell you this much. We have 350 contracts with small employers. I do not have the actual numbers with me, but I can certainly bring them to your attention. But those small employers are definitely meeting those, or work to be deemed exempt, because of the very nature of the work they do.

I think one of the interesting examples of that is the transient kind of employer that we are into. Because of the government's future trend to privatize and contract out, you move into the transient employer from one year to the next. We experienced that last summer in the tree planting, where we had people in from Quebec and British Columbia who moved in for the summer and then were gone. In fact, they were here for only a few weeks.

We have small employers under this section 38 who are obtaining money from the federal government. They are contracting out to those contractors, so they definitely will be exempt. We have the people who work in small towns like Timmins, Dryden and Fort Frances where, once they get hurt on the job, the opportunity is nil and the exemptions are possible. You have maybe the Becker's store on the corner.

Mr. Chairman: We had better move on. Mr. Upshaw, Ms. Stevens, thank you very much. Good to see you again, Orlando. I appreciate your presentation.

Mr. Dietsch: I wonder if Mr. Upshaw could leave with us his presentation as he made it. His was somewhat different from the one he handed out.

Ms. Stevens: It was a synopsis.

Mr. Dietsch: Could you leave us a copy so that we could have that circulated as well?

Mr. Upshaw: Sure.

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Mr. Chairman: Thank you very much. I am sorry to rush people along, but we are supposed to be finished when the Legislature adjourns at six o'clock.

The next presentation is from the Ontario Trucking Association. I see some familiar faces here from other worlds. Mr. Bradley.

Mr. Bradley: Just like old times again.

Mr. Chairman: Welcome to the committee. I assume you will introduce your colleagues.

ONTARIO TRUCKING ASSOCIATION

Mr. Bradley: Thank you, Mr. Chairman. I will introduce myself and the people with us today, for those of you who were not here during the Bill 88 hearings. My name is David Bradley. I am assistant general manager, government and public affairs, at the Ontario Trucking Association. I am joined today, on my left, by Michael Burke, policy and research assistant at OTA. On my far right is Les Liversidge, president of L. A. Liversidge and Associates. Les is OTA's workers' compensation adviser. On my close right is Joe Thibodeau, human resources manager at the TF-Glengarry group, a major Ontario trucking firm.

By way of introduction, I should tell you a bit about OTA and our industry. OTA was formed in 1926 and we currently represent 1,075 companies in Ontario. Those are for-hire trucking companies, private trucking companies and allied trades members, those people who sell goods and services to the industry.

The industry, both private and for-hire, directly employs 228,000 people in Ontario, which is approximately five per cent of the province's workforce. We haul 70 per cent of Ontario's exports to the United States; 75 per cent of imports from the United States into Ontario are shipped by truck. We think the industry will play a vital and indispensable role in the future of Ontario's economy, which will be based on a high value added manufacturing product.

With respect to Bill 162, which is the issue before us today, I want to say from the outset that we do not feel Bill 162 will solve all of the problems in the current workers' compensation system. I think people on all sides of the Legislature, management and workers would agree there are enormous problems in the current system.

Bill 162 is not a perfect bill. We recognize that. But on balance we do think it is a significant move in the right direction. In particular, we think there are two key elements of the bill which we can be very supportive of. The first is the proposed dual award system and the second is the emphasis on vocational rehabilitation, although we think that could be enhanced even further.

With respect to the dual award system, OTA views that proposal to be the major initiative contained in the bill. We think it will replace the inequities in the current meat chart system and it will effectively provide for a fair method of compensating injured workers by ensuring that their incomes are protected while at the same time preventing windfall gains to those who experience no decrease in earnings. We believe the time is now for the dual award system in Ontario.

OTA also supports very strongly the Workers' Compensation Board's new strategy for vocational rehabilitation and the direction of the vocational rehabilitation provisions contained in Bill 162. However, we would like to see these measures improved upon even further and we give some suggestions for that on page 7 of our submission.

We believe injured workers deserve support in getting back to work. If you wish to look at it strictly from a cost standpoint, we believe it is the best way to reduce workers' compensation costs.

Despite those two key proposals, we do have some concerns with the bill that we think have to be dealt with. Those are, first, the transitional measures that are contained in part III of Bill 162. Presently, the system overcompensates some injured workers at the expense of other, more seriously injured workers. We believe this is unfair and we do not wish to see this practice continue.

Figures that we have through the Employers' Council on Workers' Compensation indicate that approximately 20 per cent of current pension recipients are undercompensated. Bill 162 does propose to add supplements to these workers' pensions, and we see this as fair. We are not opposed to those increases, but we would like to see this accompanied by some revision to the pensions of those who are overcompensated.

Mandatory reinstatement is contained in section 54b. We are opposed to a legislated mandatory reinstatement provision. We think it is important that the system continue to provide an environment where workers and employers collectively retain the incentive for an employee to return to work and we believe some of those things already exist, most notably, again, the strategy for vocational rehabilitation and the new experimental experience rating program which the Ontario Trucking Association and the trucking industry are involved in. We believe that provides a clear incentive to rehabilitate and to re-employ workers.

We believe mandatory reinstatement will lead to problems in union-management negotiations. We believe the legal incentive to reinstate already exists in both the provincial and federal human rights codes and in labour conditions legislation.

We do not have a position per se on the proposals for the earnings ceiling contained in the bill. However, what concerns us is that we have not seen any economic impact statement whatsoever. What we are asking is that the whole issue of the earnings ceiling be discussed during the green paper consultations that will be upcoming this year.

In trucking, we are very concerned about economic impacts as we head into a deregulated environment where profit levels are absolutely thin or nonexistent in the trucking industry. Figures that we brought to the Bill 88 hearings indicated that approximately three quarters of the freight in Ontario is being hauled at a loss now.

We support the continuation of employment benefits following an injury as contained in Bill 162, but we have some reservations. In particular, we have some concerns with the wording in the bill, which does not make it clear that the continuation of benefits applies to compensable injuries. It talks about injuries in a general sense.

There is one other issue that is specifically trucking-related and that has to do with the split jurisdiction of the trucking industry, where we have employers in the Ontario trucking industry which are both federally and provincially regulated. We refer in our brief—and we could provide the committee with details at a later date if it wishes—to a trilogy of Supreme Court of Canada decisions which were handed down in May 1988 and which indicate very strongly that the provincial government does not have jurisdiction over employment conditions for federally regulated companies, whether they be trucking or other industries. We believe this casts into question the legality of the continuation of employment benefits and the mandatory reinstatement provisions that are contained in Bill 162. We raise

this with the committee. It may wish to touch base with the ministry people to see how they would approach that problem.

In conclusion, we feel that while the concerns we have raised and others we will be raising need to be addressed, Bill 162 sets a positive direction for workers' compensation in Ontario. We believe that on balance the bill will serve to redress some of the inequities that exist in the current system. At the heart of our support for the bill is the proposal to introduce a dual award system. Again, we welcome this initiative and we urge the committee to lend its support to it.

Either myself or my colleagues will be pleased to try to provide any answers to questions you might have.

Mr. Black: You have expressed very strong support for the dual award system. We have heard some other briefs today that do not have that same note of strong support. I would like to hear why you believe the dual award system is a step forward.

Mr. Bradley: Again, we believe there are inequities in the current system. I think workers are upset about the meat chart system. Employers share those concerns and the concerns for undercompensation and overcompensation. We believe there is a history involved of study of the dual award system. It is not a new idea in Ontario. From what we have seen of it, we believe it will be more equitable and more fair.

Perhaps there is something of a more technical nature that Les would like to add to that.

Mr. Liversidge: I will try. If the present system of clinical impairment assessment fairly compensates, it does that by sheer accident. It will do it on a hit-or-miss basis. It does not relate the actual individual's earnings impairment to the amount of permanent disability pension.

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This simply means that in almost every case somebody will be dealt a wrong hand. Some will be overcompensated and some will be undercompensated. The system simply seems to be unfair. Through its very random approach in determining what the impairment is, strictly based on degree of clinical impairment, it will not give a pension in almost any case which truly reflects the degree of injury impairment of an individual. The language of the act itself shows that at best it just tries to approximate that degree of injury impairment. I guess that is the main problem with it.

The controversy surrounding the clinical impairment award is not new to Ontario. It has been a controversy that has been raging for many years. We saw this surface in recent times in a major case before the Workers' Compensation Appeals Tribunal, the Villanucci case, which took about 28 days of hearings, to try to address the issue of what the present act even meant. Through those proceedings, it became abundantly clear—it was not clear up until that point in time—that the current system simply is not fair. The dual award system, while not perfect, certainly seems to be a more equitable mechanism to compensate for the residual effects of industrial accidents.

Mr. Black: If I could follow up on that question, you say it "seems to be." Are there jurisdictions where experience would indicate that it is? Are we looking here at a theoretical model which has not been tested?

Mr. Liversidge: It has been tested in a number of jurisdictions. I think if you look at it from the viewpoint of the raw concept itself, it clearly makes sense. It seems to make inherent sense to compensate somebody for actual wage loss following a compensable accident—and I do not know how somebody can argue with that—and at the same time ensure that where there is a noneconomic impact, where there is actually a physical impairment, that is compensated through entirely different and distinct mechanisms.

Mr. Black: A second question, if I may, Mr. Chairman. You expressed some concern about the rehabilitation program that is proposed under the new legislation. Sorry, I should be directing my questions to you, Mr. Bradley. I am sorry. Can you identify more specifically what those concerns are?

Mr. Bradley: Sure. We are specifically concerned about the timing. If you will turn to our recommendation which is contained on page 6, you will see that we are asking that section 54a be amended so that a vocational rehabilitation assessment will be performed within the first 45 days of absence from work, so that there will be an automatic review. Les, could you expand on that a little further for me, please?

Mr. Liversidge: What the trucking association is putting forth is simply saying that the legislation ought to go further; that rehabilitation is the key area in workers' compensation. The trucking industry is not a unique industry in the sense that it has fundamental problems in the area of vocational rehabilitation, but is effectively a one-job type of industry.

Studies upon studies and inquiries upon inquiries have concluded that early intervention is critically important to successful return to employment. We need not say more than that the present system is failing to a great extent the people who depend upon it; that the present system is not providing effective vocational rehabilitation. People are not being returned to work as early as they should be.

The trucking industry, in many very positive movements—particularly through experience rating and motivating industry to pay more attention to rehabilitation—wants to see enshrined in legislation a requirement that the Workers' Compensation Board mobilize its resources at an earlier day. The earlier one intervenes in trying to effect an appropriate and proper plan to return somebody to work, the more one will ensure that the probability of success will be higher. While the bill comes forward—and I think that the fact that vocational rehabilitation is commented on in the way it is in Bill 162 is a step forward; and that there is some requirement in addition to what there is now is a step forward—I think that earlier intervention is called for.

Miss Martel: If I can just carry on from that point, when you talk about earlier intervention, are you talking about only an assessment or are you talking about actual services being offered?

Mr. Liversidge: Services should be offered at the earliest possible moment. If services should kick in on day one, then kick in services on day one. If they are not required until day 15, kick them in on day 15; whenever needed, that is when you implement the services.

You want to make sure that there is a proper and effective focus of those services though. Too often now, under the workers' compensation system case goes on for X number of months: six, eight, nine, 10 months. There is no change in its status. The person is still off work. There is no good medical

reason for that, just a lingering impairment, and not too much is being done in a rehabilitation sense. There is an absence of any type of assessment at all, until many, many months into the system. It would seem to make clear sense that a well-structured vocational rehabilitation program is going to flow from a comprehensive assessment of one's abilities and disabilities, so that a planned, considered effort is put forward. Those types of programs are missing in the present system.

What the new legislation also calls for and clearly contemplates is perhaps a greater and more active involvement of the employer. The active participation of the employer in the rehabilitative process is crucial. Too often, what happens is for the seriously impaired individual, benefits are paid for many months and the relationship between employer and employee diminishes and fades with time. When the person is able to facilitate some type of attempt to re-enter the workforce, there has not been a maintenance of the relationship between employer and employee.

As a result, 12 or 18 months may have transpired, and there has been no intervention on anybody's part—on the employer's part, on the board's part or on the physician's part—and the chance of success is significantly impaired. By ensuring early intervention, you will ensure active participation of all the appropriate parties.

Miss Martel: Just on that point, would your association object if the board were actually obliged to provide services instead of, as under the current bill, only doing that when it considers them to be appropriate?

Mr. Liversidge: I could not envision a situation where it would be appropriate for the Workers' Compensation Board to provide services and where it would not do so. It would seem to be not in the interest of anybody associated with the system, and I do not think that there would be the will existing within the board to do that. I think that it is entirely appropriate and necessary to have certain discretionary abilities empowered within the WCB, to ensure that the best-structured rehabilitation plans are delivered.

Miss Martel: I appreciate your frankness. You should meet some of my workers, where the board did not consider it appropriate and it should have been.

Let me just ask you about your point about the dual award system, which would prevent windfall gains to those who experience no decrease in earnings. I am sure you are talking about overcompensated workers there. Can I ask how many overcompensated workers you would have in the trucking industry? Do you have any studies on that? Any numbers?

Mr. Bradley: We do not have any numbers per se. What we have are broad numbers, that I related to you. We do not know that we are different from, worse or better than other industries. I do not have any specific numbers that I can bring to you on that.

Miss Martel: So you have no sense about what kind of windfall gains are being accrued by injured workers at this point?

Mr. Liversidge: I guess the best way to categorize a windfall gain is to look at the scenario of the partially disabled employee who suffers an accident in the course of the employment, undergoes a period of temporary disability and recovers to the point of being able to effectively partake in pre-accident employment. Not every trucker who is hurt in the course of the

employment ends up being sidelined and going off to another industry. The vast majority, of course, have returned to the trucking industry and a vast majority of those are in their pre-accident occupation.

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I would not think that the experience of trucking would necessarily be an average experience compared to the system as a whole, but those are the situations where the individual may receive a rather sizeable pension. It is not the fault of the individual. It is not because they are taking something to which they are not entitled at all, but the fact is that they are getting an entitlement even though there is no ongoing wage loss whatsoever experienced as a result of their injury.

Now that appears to be something beyond what the Workers' Compensation Act, one would think, is attempting and should be delivering. It seems to be primarily a mechanism to compensate for wage loss arising out of industrial injury or disease. If that is the case, if that is what workers' compensation is all about, then it seems to be not a problem for an individual to receive the high monthly pension award where there is no wage loss. Take that and couple that with the incident or an event where the same minor injury may fully incapacitate somebody from earning a livelihood because of his individual circumstances, for those two individuals to receive effectively the same pension is, to me, simply not fair.

Miss Martel: I guess it all depends on your idea of what the system is all about. Since 1915 we have had a permanent, lifetime pension paid to recognize that a permanent disability will also exist.

Mr. Liversidge: You have to jump up and down—

Miss Martel: We have never had the pension cut off as we are going to under this bill..

Just let me make one more point in terms of the dual award system, because I do not know if you have had any experiences in other jurisdictions. It would not be so bad if an actual wage loss were compensated for, but there is absolutely no guarantee that this is going to happen under the bill, given the present wording. Certainly that is our concern, that nowhere in this bill is the board obliged to provide the actual wage loss either. That is where we see workers getting shafted under this bill.

Mr. Liversidge: There may perhaps be situations that the bill will contemplate where there will be a deemed wage loss and somebody may in fact be earning close to his pre-accident wage as well. One of the fundamental criticisms we are seeing with regard to the dual award system of Bill 162 has been to simply disallow the discretionary ability of the Workers' Compensation Board, so that once the board gets involved it all turns into a mess. They make a decision and inevitably and invariably they are going to make the wrong decision and are going to dish out injustice left, right and centre.

I am not one who continually supports the adjudicative expertise of the Workers' Compensation Board of Ontario. In fact, mistakes are made, but it would seem to me that discretion and the whole point of discretionary application of legislation is to allow for the application of a certain ruling in the individual circumstance. I think people will benefit from the ability of the board to apply discretion and not be hurt by it.

Miss Martel: We are going to have to agree to disagree on that. I

did work at the board, but I still feel there is way too much discretion and there is no way to check it under the present system. What I see happening in this bill is increasing that even more, which I think is going to be to the detriment of workers, both in terms of rights and benefits. But I thank you for your frankness in responding.

Mr. Mackenzie: I have just two points I would like to cover again that bother me with your presentation, even allowing for my own biases. One of them is that you make a very strong case for the fact that there are overcompensated and undercompensated workers and this should be taken care of. It is exactly the same argument that we had from the automotive vehicle manufacturers earlier today.

Yet your answer, when my colleague asked about numbers and gave us examples, was exactly the same. You have no studies and no figures. I would appreciate it if you could give us some actual figures in terms of the numbers that are overcompensated or undercompensated or some examples. It was centrepiece to your brief, it was centrepiece to their brief; yet the response to both questions was, "We have no figures to give you."

Mr. Bradley: No, I said I do not have trucking figures but I did say that there were industry-wide figures. I think we could provide those, or the Employers' Council on Workers' Compensation will bring those numbers with it when it attends.

Mr. Mackenzie: It would be appreciated if you could give them to us.

The other thing I have some difficulty with is your comments about—my colleague asked this as well—rehabilitation. It is one area where you might even go further. It is absolutely essential, and I agree with you, to maintain a relationship with the worker and his employment, but when asked whether you would make it mandatory, you still want the board discretion.

If there is a problem we are having across Ontario today, it is the fact that basically workers in these cases do not trust the board. At least some of us who have done a lot of WCB work have not got a heck of a lot of confidence either. Here we have workers and a report that was devastating, the Majesky-Minna task force report on the lack of rehabilitation. You want more, but you balk immediately when it is suggested that it should be mandatory.

Mr. Bradley: We thank you for your comment.

Mr. McGuigan: In the few minutes we have, I wonder if you can expand on your comment about the trucking industry being a one-job industry. For instance, are most of your people injured in road accidents or are they injured at the docks? Are they long-term injuries? It used to be that, with the poor seating and poor springing we had in trucks, people's backs used to go out, but nowadays I think you have much better and more comfortable trucks, a longer wheel base and so on. Can you give us a bit of background on the type of injury you are dealing with in trucking?

Mr. Bradley: It is still predominantly back injuries. Perhaps Mr. Liversidge can provide some other background.

Mr. Liversidge: I am afraid that we did not bring with us any overview of the breakout of injuries for the transportation sector. Undoubtedly, the Transportation Safety Association of Ontario would have a good overview of that very precise information you are looking for.

Mr. McGuigan: For instance, if a person were injured in a part of his body, the foot or leg, in automobiles you have hand controls and modified controls for a person who might have some impairment. Is any of that used in the trucking industry among the drivers?

Mr. Bradley: Certainly the drivers require hands to drive. The propensity of injuries again would be in the back. The driver slips and falls getting into the truck, that kind of thing. In the dock, I would suspect you would see an increase in the kind of injuries you are speaking of. I think it is important to note in our submission that the injury frequency in the trucking industry has moderated. We are not entirely happy with where it is at now, but we have seen some moderation over the last few years.

Mr. McGuigan: I dealt with a private trucker who was buying a truck and he actually bought a truck with modified controls. Apparently, it worked in his case as a private trucker. I wonder if you have any experience or know of any of those situations.

Mr. Bradley: Where a driver-worker has been injured and then put back into the—

Mr. McGuigan: He was an owner-driver and he was buying a new truck. As a matter of fact, he—

Mr. Bradley: I am sure they exist. I have not seen it specifically with respect to driving. I know of instances where drivers have gone back into the office and been retrained for computer technology and that kind of thing. I do not know of instances where the controls of the truck have been modified. I would have to check, but it would likely be a difficult thing given, as you well know, the safety regulations we are currently facing with respect to the specification of vehicles. We would have to take a closer look at that.

Mr. Chairman: Mr. Bradley, thank you and your colleagues for coming before the committee.

That completes the presentations for the afternoon. We meet next on Wednesday afternoon.

Mr. Tatham: I am just wondering, do we have any presentations coming from ordinary people who do not belong to either unions or to a management group? Are there ordinary people who have had problems?

Mr. Chairman: When I was looking through the schedule for the full three or four weeks of hearings, there are a couple, but not very many. We had so many problems simply working in organizations that represent a large number of people that it was very hard to justify putting in a person who represented only himself. It was very tough. I am speaking for the clerk here, but I think she would—

Mr. Black: The unions represent what, 30 per cent or 40 per cent of the workers?

Mr. Chairman: More than that. Mr. Mackenzie?

Mr. Mackenzie: About 37 per cent now, I think, or 38 per cent.

Mr. Tatham: I am wondering about the other 63 per cent. Are we getting enough people in, ordinary guys and gals who have problems?

Mr. Mackenzie: Most of them would not make the effort if they did not have some organization to represent them.

Mr. Chairman: Or they would not know the process. It is very tough.

Mr. Black: I suppose the injured workers' associations are not necessarily union people, are they?

Mr. Chairman: No, not necessarily.

Mr. Black: So they would represent to some degree.

Mr. Chairman: Any other matters? If not, we are adjourned until Wednesday afternoon.

The committee adjourned at 6:01 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

WEDNESDAY, MARCH 1, 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr. Black

Fawcett, Joan M. (Northumberland L) for Mr. McGuigan

Mackenzie, Bob (Hamilton East NDP) for Mr. Wildman

Martel, Shelley (Sudbury East NDP) for Mrs. Grier

Clerk: Mellor, Lynn

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Human Rights Commission:

Anand, Raj, Chief Commissioner

From the Canadian Auto Workers:

Nickerson, Robert, National Secretary-Treasurer

Crocker, Jim, Chairperson, Workers' Compensation Board Committee

Flynn, Jerry, Staff Liaison, Workers' Compensation Board Committee

Parent, Gary, Workers' Compensation Board Committee

From the Ontario Chamber of Commerce:

Kearney, Robert, President

Kenny, Wallace, Vice-President, Employer/Employee Relations Committee

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, March 1, 1989

The committee met at 3:30 p.m. in room 151.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Mr. Chairman: The standing committee on resources development will come to order. We are continuing our examination and hearing submissions on Bill 162, An Act to amend the Workers' Compensation Act.

The clerk has handed out to committee members the schedule, and in particular the travel schedule, for next week. There are some details on it beyond next week, but I would advise members to ignore anything beyond next week, because we are having some problems with scheduling in the northwest and some of that may change. I would just encourage members to regard next week's travel arrangements as cast in stone, but not those of the week after that. We will get the actual arrangements as soon as we can after that.

Mr. Mackenzie: Last week in Hamilton, the injured workers demonstrated briefly and talked to the Minister of Labour (Mr. Sorbara). As he confirmed in response to a question in the House, he told them that he had nothing to do with the scheduling of the committee or the fact that 40 some groups in Hamilton were denied the right to appear before the committee.

He also told them—Mr. Crevar, one of the injured workers, and some of the groups contacted my office—that if they were not happy with the arrangements of the committee that they should go back to the committee. Given that comment of the minister, I would like to move once again that we extend the schedule of hearings in Hamilton to accommodate the 41 groups that have been denied access to this committee.

Mr. Chairman: The motion to extend hearings has, in a broad way, been put, but it has not been put for Hamilton in particular. Do you want to speak briefly to your motion? I think you would agree that we do not want to take up the afternoon with this debate, with the representations we have before us.

Mr. Mackenzie: It is not my intention to take a lot of time with it. The fact is that, I believe, 21 groups are being heard the day that we reschedule for Hamilton. There are 41 or 43 groups, I forget which, that do not have status before the committee on that day. Some of them are some of the more important and active groups in terms of workers' compensation problems in the Hamilton area.

I give you as one example only the McQuesten Legal and Community Services clinic, which probably does more work on workers' compensation than any other clinic in the Hamilton area. These people feel very strongly that they should be heard at the hearings in Hamilton. They are from Hamilton through the Niagara Peninsula. I believe that we should extend the hearings in Hamilton to accommodate these 41 or 43 groups, and I so move.

Mr. Wiseman: I feel that if we extend them in Hamilton—I have some

in eastern Ontario that have asked to be on and missed the cutoff date. It would be awfully hard for me as a member, even though I sympathize with Bob, to see it taken on in Hamilton and not taken on in eastern Ontario. I think if you do that, you open it up that you must look at eastern Ontario as well. I do not know whether we have the time to do it all. It would be nice if we could, but if you open it up for one area, I think you have to do it for them all.

Mr. Mackenzie: I would like to make a correction, Mr. Chairman.

These are people who did meet the dates. They are not people who missed the dates at all.

Mr. Dietsch: I recognize what the member is saying and had come prepared today to move a motion as well. This motion is not in writing. I have mine in writing. I do not know how you want to deal with it, but I have a motion in writing that would certainly accommodate more than what we have been able to have at the hearings thus far. I do not know if the member wants to—

Mr. Chairman: It is difficult for the chair to deal with a motion that is invisible at this point. I have not seen your motion.

Mr. Dietsch: Likewise, I guess my understanding is that it was required that the motions had to be put in writing, and I did that.

Mr. Chairman: Right, but we must deal with one motion at a time. Are there any other comments on Mr. Mackenzie's motion?

Mr. Wiseman: Could I just correct my comments then? If Bob's and Mike's were on time and we are opening it up, then I think that anyone who made a submission before the cutoff should be looked at, not just one particular area of the province such as Hamilton. There may be some down my way that met the cutoff, and we would have to go back there and explain things to them.

Mr. Chairman: I see that as your serving notice of your intentions, but the motion put by Mr. Mackenzie deals only with Hamilton. I am not quarrelling with what you say, but we are dealing with the specific wording of Mr. Mackenzie's motion. Is that understood? Okay, are we ready for the question?

Mr. Dietsch: Would you please repeat the motion?

Mr. Mackenzie: I have moved that the hearings in Hamilton be extended to accommodate all those groups that applied for standing before the committee.

Mr. Dietsch: How many groups is that?

Mr. Mackenzie: I believe 43 additional groups. Either 41 or 43, I am not sure.

Mr. Chairman: Just for the information of committee members, if this motion passes—and I am not commenting on it either way—it would have to be a case of rescheduling at another date, rather than extending that date.

Mr. Dietsch: Is it the intent of the mover to have all those hearings in Hamilton? Is that what the intent of the mover is?

Mr. Mackenzie: This is where they were scheduled originally.

Mr. Chairman: I think what Mr. Dietsch is getting at, if it helps, is that if the committee decided, without attempting to read what is in the minds of the committee collectively, to open up the hearings, that would obviously open up the St. Catharines area on hearings as well, and I doubt if Mr. Mackenzie would preclude that.

Mr. Dietsch: Not knowing, I find myself in the same difficult position with respect to the hearings being established all in one centre. I prefer my own motion to Mr. Mackenzie's, so I am going to vote against Mr. Mackenzie's.

Mr. Wiseman: If he wants support from me, then I think he should broaden that to say that anyone who submitted prior to the cutoff date be in on that group.

Mr. Chairman: I would just caution the committee that if it were just a motion like that, I would be forced to rule it out of order because it had been defeated. The only way we could deal with that is if a motion to reconsider were put, but at the moment we have a motion by Mr. Mackenzie. I suggest we deal with that motion. Are you ready for the question?

All those in favour of Mr. Mackenzie's motion, please indicate. All those opposed?

Motion negatived.

Mr. Dietsch: I have a motion that I will circulate.

Mr. Chairman: Mr. Dietsch moves that the committee direct the clerk to reschedule public hearings on the week of March 20, 1989, to begin at 9 a.m. and every half hour thereafter until 6:30 p.m., hearings to conclude daily at 7 p.m.

Further, that the subcommittee meet tomorrow, March 2, 1989, at 1 p.m. to review scheduling public hearings to include Monday, April 3; Tuesday, April 4; Wednesday, April 5; Thursday, April 6; Friday, April 7, and the week of April 10 to April 14, inclusive, from 9 a.m. until 7 p.m.

Mr. Dietsch: The motion is in two parts.

Mr. Chairman: I am getting uneasy about time problems here. I hope that members will speak briefly to the motions in response to them.

Mr. Dietsch: I recognize some of the concerns that have been placed before us on a number of occasions and the points that have been raised by myself and some of my colleagues with respect to the number of interested parties who have shown an interest in getting before the committee.

By the particular first part of my motion, if we limit the presenters to a time limit of half an hour, we will be able to include an additional seven presenters on March 20, an additional seven presenters on March 21, an additional seven presenters on March 22 and an additional 12 presenters on March 23. That would allow the hearings to hear an additional 33 presenters.

By dealing with the other part of the motion in respect of tomorrow, it indicates that there is an opportunity to hear considerably more presenters if we take the highest and best use of those particular weeks.

I purposely did not include those on the road because I know that the

clerk has already gone through a great deal of effort in trying to put the time elements before this committee which, by the way, were agreed upon. So as not to interfere with those, the particular committee meetings that I am referring to are in Toronto. It will require some rescheduling, of course, especially in terms of individuals, as Mr. Mackenzie outlines, who have shown a very strong interest in getting before this committee.

I do not want to rule out the opportunity for many of the presenters who are not able to get before the committee at one point in time or another to present written briefs before us. I know that this committee will, as it has in the past, consider those written briefs very extensively. I put that motion before the committee in order to satisfy some of the areas that have been spoken to.

1540

Miss Martel: I would like to respond to the motion put forward by Mr. Dietsch and say a couple of things. We have been very clear on this side that we wanted this committee to hear everyone, because the bill is so important and it is going to make dramatic changes in the Workers' Compensation Act. We said when we moved our motion last week that we wanted everyone to be heard, and for that to be done, if at all possible when the House was not sitting.

If I look at the schedule before us, you are considering that on the week of March 20 we be in Toronto, where we have a wait list of some 80 people at this point in time. I would like to ask the clerk to take a look at how many of those people can be scheduled under the new proposed schedule that you have outlined here. I certainly would be willing to look at that.

However, I do not think your motion addresses our main concern, which was that everyone should be heard. If I go to some of the other communities across the province and outline the wait list, that resolution does not cover even one half of them. For example, in Hamilton we have a wait list of 44; in Oshawa, 1; in Thunder Bay, 9; in Timmins, 19; in Sudbury, 54; in Ottawa, 32, and in Windsor, 42. There is no way under this schedule that we should expect all of those people in those communities to try to come to Toronto during the week of March 20, and there is no way they would all be filled in in that time period anyway.

I would like to say that the motion moves a little bit to respond to our concerns to hear from everyone, but it certainly does not respond to the motion that we moved last week that everyone should be heard. I think that if you are going to try to accommodate people, then you should accommodate everyone, not only half.

Mr. Chairman: Thank you. Just for the information of the committee, I was informed just today by the whips that unless there is some remarkable last-minute change, no committee can meet during the week of April 3, which includes the periods indicated by Mr. Dietsch. That is agreed by the three party whips, as I understand it, because of previous arrangements made for one of the caucus meetings, the Progressive Conservative one.

Mr. Dietsch: Mr. Chairman, I am not sure about that schedule as you point that out, but that would be dealt with at tomorrow's subcommittee. That is why I wanted to look at it.

Mr. Chairman: Fair enough. As a matter of fact, Mr. Dietsch, would

you be prepared to have this motion dealt with at a subcommittee meeting prior to the meeting tomorrow afternoon, at least to talk about the problems involved with it, so we do not take the rest of the afternoon dealing with this? I am not suggesting that we vote or anything like that at the subcommittee tomorrow, but at least as a steering committee of this committee deal with all of the issues around it when we have got time to do it without people sitting and waiting to be heard.

Mr. Dietsch: Would I be correct in assuming that if the committee agreed with this motion, that would not stop the clerk from getting in touch with those people who would require to be got in touch with? I am more than amenable to these sorts of things, as I have been all the way along. We are certainly willing to hear as many as we can.

Mr. Chairman: Are you prepared to postpone dealing with this motion—we can deal with it if you like—until the steering committee has had a chance to talk about it tomorrow?

Mr. Dietsch: I thought I understood that the members opposite were in agreement with it. Am I correct?

Mr. Chairman: I did not hear Miss Martel say that.

Mr. Dietsch: You are not in agreement with it?

Miss Martel: No, Mr. Dietsch. I thought I was fairly specific in saying that we do not have any idea of how many that will accommodate in Toronto, and it certainly is not going to pick up the wait list from all of the other places outside of Metropolitan Toronto.

Mr. Dietsch: But you are not willing to bring extras on? I do not understand.

Mr. Chairman: That is why I think it is not appropriate. I hope you will not insist that we deal with your motion this afternoon, because it is going to take too long. If we deal with it tomorrow at one o'clock as a steering committee and if the steering committee cannot resolve it between one and 1:30 p.m. tomorrow, then when the committee sits tomorrow following question period at 3:30 p.m., the whole committee can deal with it in the form of your motion.

Mr. Dietsch: I think that would probably be the best. Then we do not have to hold up our presenters. That would be fine with me.

Mr. Chairman: Okay, thank you very much. That is what we will do. The subcommittee will meet tomorrow at one o'clock. In this room? We will find a room and let you know.

We have with us this afternoon, to begin with, the Ontario Human Rights Commission. Mr. Anand is here and some of his colleagues. Welcome, Mr. Anand. We are pleased that you are able to be here this afternoon.

ONTARIO HUMAN RIGHTS COMMISSION

Mr. Anand: Thank you very much, Mr. Chairman. With me at the table is Ms. Tanja Wacyk, who is director of policy and research for the Ontario Human Rights Commission—

Mr. Dietsch: Excuse me, Mr. Chairman. I am sorry to interrupt one more time, but I wonder if it is possible that the presenters could present the same document that they are going to present to us, so that we could follow along with it. Is it possible that we could ask that of the presenters as they come before us? I find it easier to follow along.

Mr. Chairman: I think Mr. Anand has given us his brief. It is up to him what he says.

Mr. Anand: For the information of the members, I will be substantially following the text.

Mr. Chairman: Okay. Whenever you are ready.

Mr. Anand: Consistent with our mandate to actively promote Ontario's public policy, and I quote now from the Human Rights Code, "to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law," the Ontario Human Rights Commission welcomes this opportunity to comment on the proposed legislation to amend the Workers' Compensation Act.

I do not intend to speak to the many complex and technical changes in the workers' compensation scheme which would result from the passage of Bill 162, An Act to amend the Workers' Compensation Act. As you will see in a moment, we intend to speak only to two significant aspects of the bill. But we strongly encourage this committee with great respect to consider all aspects of the bill, not only from the standpoint of the workers' compensation system but also within the broader context of ensuring respect for the spirit and intent of the Ontario Human Rights Code, which guarantees equal treatment without discrimination for all disabled persons.

As you will see from my presentation, there is a significant intersection between workers' compensation, human rights law and the Ontario Human Rights Code—and indeed a large chunk of our present case load at the Human Rights Commission, over 40 per cent, relates to disabled persons. That is far in excess of race, sex and all the other grounds. In addition, a large segment of those disability complaints relate to workers who are on workers' compensation or who seek it.

In our submission, we will focus on concerns with two elements of Bill 162, the reinstatement provisions and the age distinctions. We will not make any comment on any other provisions of the bill.

With respect to reinstatement and re-employment provisions, the new statutory obligations to rehire injured workers are very significant from the commission's perspective, because they are closely related to similar but broader obligations imposed by the code to accommodate disabled persons in the workplace. It is clear however, from our standpoint, that more thought should be given to how the Bill 162 proposals mesh with the rights of workers and the corresponding obligations of employers which are set out in section 16 of our code, specifically with respect to the resolution of disputes over the rights of injured workers to reintegration into the workplace.

Indeed the Minister of Labour (Mr. Sorbara) appears to have acknowledged this in his January 19 announcement of proposed amendments to the re-employment provisions. He stated at that time his intention to clarify the parallel employer responsibilities under the code and the Workers' Compensation Act and "to require an employer to offer injured workers modified

work in keeping with the spirit and intent of the recent changes to the Human Rights Code."

I have quoted that sentence from the minister's statement because we do not of course, as yet have draft amendments to the amendments, if you like, so we are relying at this point upon the minister's statement.

1550

The recent changes to the Human Rights Code that he refers to were significant amendments promoting access for persons with disability to employment, services, a wide variety of social activities which were proclaimed by the government on April 18, 1988. It is those recent changes that the minister has expressed his intent to stay within in terms of spirit and intent.

The commission will examine closely amendments that are put forward and will follow your hearings with great interest. In our view, unless the issue of jurisdictional overlap is addressed and resolved now, prior to the passage of the legislation, the result will be jurisdictional and administrative confusion between the roles of the commission and the Workers' Compensation Board, which will result in frustration on the part of both injured workers and employers and, in turn, an ineffective public policy response, in our view, to the urgent need to promote reintegration of injured workers into the workplace.

In order to understand this jurisdictional overlap, I want to outline, first, the relevant provisions of Bill 162 and then the code provisions for the accommodation of disabled workers which relate to this overlap issue. I will move quickly through Bill 162 reinstatement proposals because, of course, I am sure they are very familiar to all of you.

As we have noted, those obligations do not apply to the construction industry and small businesses with fewer than 20 workers or other employers or workers if exempted by regulations.

Where an injured worker has at least one year of continuous service on the day of injury, the employer must reinstate the recovered worker in the pre-injury position or provide alternative employment of a comparable nature and earnings.

On the other hand, if the worker is unable to perform the essential duties of such position, the employer must offer the worker the first opportunity to accept suitable employment that may become available, and criteria for alternative and suitable employment may, as well, be established by regulation.

These reinstatement and re-employment obligations terminate on the earliest of three dates: the two-year anniversary of the injury, one year after the worker has recovered or the worker's 65th birthday.

There is a presumption created, where the injured worker is dismissed within six months of reinstatement, that the employer has breached the employee's statutory obligations and can be assessed a penalty.

In the bill as it presently stands there is no appeal from the board determination of whether an employer has met the reinstatement obligation to the Workers' Compensation Appeals Tribunal, but I understand that the minister has indicated the government's intention to permit such appeals.

Finally, in terms of the salient features of Bill 162. Regulations may be issued by the board, subject of course, to approval by the Lieutenant Governor in Council, to establish the content of the term "essential duties" in terms of determining the essential duties, what constitutes alternative employment of a nature and at earnings comparable to the worker's pre-injury employment.

What does the code provide in the same area? Part I of the Ontario Human Rights Code prohibits discrimination based on handicap—that is the term used in the code—and provides for equal treatment of persons with disabilities in a wide variety of social activities, including services, which encompass the services of the Workers' Compensation Board, and employment.

Persons with disabilities are also protected from discrimination which results from so-called neutral requirements—requirements, qualifications or factors which may appear neutral, but which have the effect of placing them at a disadvantage. In other words, the code focuses not only on the intention of a party to discriminate but, perhaps much more importantly, on so-called neutral requirements which might have disadvantageous effects for those groups which are protected by the code—in this case, persons with disabilities.

The code's guarantees of equal treatment for such persons are qualified by the requirement that the person be capable of performing the essential duties that accompany the exercise of the right—in this case, the employment. Subsection 16(1) of the code states: "A right of a person under this act is not infringed for the reason only... (b) that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of handicap."

In the employment context, subsection 16(1) of the code recognizes that in certain circumstances the nature or degree of a person's disability may preclude him or her from being able to perform the essential duties of a particular job, for example, due to the worker's employment-related injury.

However, significantly—these are among the amendments that were proclaimed in force in April 1988—the next subsection of the code says that a person cannot be found incapable of performing those essential duties unless it can be shown that the needs of the person cannot be accommodated by the employer without what is termed "undue hardship" to the employer. The code then expands on what constitutes undue hardship, indicating cost, outside sources of funding, if any, and health and safety requirements, if any.

That criterion of undue hardship and those factors that are listed are obviously general ones. We made a commitment to the government and to the public that we would draft guidelines in order to expand on those criteria, recognizing that the government did not choose to issue regulations at the time when these provisions of the code were proclaimed on April 18, 1988.

We are in the process of finalizing those guidelines for assessing accommodation requirements in disability cases under the code. I have described the process that we went through in arriving at that point in our proceedings. Extensive public consultations were undertaken and submissions were advertised for and received. Then draft guidelines were developed at some length, using an outside consultant and an internal committee, and were sent out for comment to a wide group of interested experts and members of the public, comprising significant segments of the disabled community, worker and employer organizations and other interested bodies, including government—over a dozen ministries. Finally, formal face-to-face consultation sessions took place with many of the same interested parties.

My point is that the aim was to ensure as far as possible that the guidelines were reflective of the wide diversity of views and expertise of the disabled community, persons responsible for accommodations, including employers, and the greater community. The guidelines, when they are finalized, will set out the issues, as we see them, to be considered when determining what accommodation, if any, is appropriate. They will also set out how costs attributable to decreased productivity, efficiency or effectiveness can be taken into account in assessing undue hardship under the cost standard. I expect that those guidelines will be available to the public within the next few months.

1600

Having set out the code provisions and the description of our guideline process, I want to state precisely the nature of the jurisdictional overlap between Bill 162 and the Human Rights Code. The code requires that employers accommodate disabled workers. This accommodation can take many forms. When a worker is injured on the job, the employer may be required to hold that job for the worker until he or she is ready to be reinstated. The employer would be released from such a requirement only if this duty were to cause undue hardship to the employer.

Similarly, the employer has a duty to accommodate a disabled worker when it appears that the worker is incapable of performing or fulfilling the essential duties of the job without such accommodation. As examples, this could mean that the employer, after making an individualized assessment of the specific needs and circumstances of the worker involved, may be required to make adjustments to work practices, redefine job duties, modify the physical layout and environment of the workplace or a wide range of other possibilities.

In contrast, Bill 162 does not recognize the potential right to reinstatement for all workers under the code, and it stops short of establishing a duty to accommodate workers in order to assist them to perform the essential duties of the job. Under Bill 162, the employer's obligation is to reinstate the worker in the position the worker held on the date of injury or provide the worker with alternative employment of a nature and at earnings comparable to it. The section goes on to say that if the worker "is unable to perform the essential duties," the same term that is used in the code, the employer is obliged only to offer the worker the first opportunity to accept suitable employment that may become available with that employer.

The significant difference in the duties imposed on employers and the very real potential for the application of conflicting standards will be exacerbated, in our view, by parallel powers to issue regulations. As I have stated, under Bill 162, regulations may be issued by the Workers' Compensation Board, with the approval of the Lieutenant Governor in Council, to establish the criteria for determining essential duties and alternative employment of a nature and at earnings comparable to a worker's pre-injury employment.

At the very least, such regulations, when issued, will overlap significantly with the code's guidelines and the commission's guidelines dealing with the duty to accommodate. In addition though, as I have stated, the code provides the Lieutenant Governor in Council with the explicit power to enact regulations covering the same substance as our guidelines are designed to elucidate right now. Such parallel regulation-making power between Bill 162 and the code, in our view, adds to the potential confusion for both workers and employers about their rights and responsibilities under the two statutes of the province of Ontario.

As I have noted, the minister has indicated his intention to amend the provisions of Bill 162 to require employers to offer re-employment in the form of modified work in keeping with the spirit and intent of what I have described just now. While this might appear attractive at first blush, in our view there is a very real danger that the proposed changes will only aggravate jurisdictional confusion, especially if they involve incorporating very similar, if not identical, language to the code into Bill 162. This is because we will still have two separate agencies administering the provisions, passing and enforcing regulations and guidelines, developing different and competing interpretations and applications of the law and generally contributing to inconsistent jurisprudence.

Indeed, it should be noted that the accommodation obligations under the code clearly are not restricted either to workers or injured workers, or indeed persons with disabilities as a whole. The accommodation obligations under the code apply to the whole variety of grounds under which one can file a complaint under the code, including religion, sex, race and all of the other grounds which appear in the code.

In addition, as we have noted at the bottom of page 7, the code obligations apply to all employment relationships and all disabled workers. The specific exclusions which are noted at the top of page 8 and which I have referred to already are not applicable under the code.

The consequence is that these excluded workers, to the extent that in being refused reinstatement they are being discriminated against on the basis of their disability, if that is the allegation, will still have recourse to a complaint under the code.

The code has been characterized by the courts as a higher law, as quasi-constitutional. I say that only to point out what is explicitly stated in subsection 46(2) of the code, which is that in the event of conflict between it and any statute, including the Workers' Compensation Act, the Human Rights Code prevails unless the Legislature explicitly includes what has commonly become known as a "notwithstanding" clause. The result is that Bill 162 cannot be interpreted to deny rights which already exist under the code for those persons who are expressly excluded by the bill.

The further consequence, though, is that all workers, including those who are covered by the bill and feel that they have a right to exercise under Bill 162, can also take action under the code in order to obtain redress that is much broader and more flexible than Bill 162. In addition, in the area of remedy, as I have noted, under the code the worker can obtain not only reinstatement, back pay and benefits but also an award of damages, including damages resulting from mental anguish, which is clearly not available under Bill 162.

Bill 162 provides for a discretionary penalty for employers who do not comply with the reinstatement obligations, to a maximum of one year's temporary total benefits. Indeed, as we have noted at the bottom of page 8, if employers prefer simply to pay the penalty, it is questionable whether the bill is creating a reinstatement obligation at all.

In addition, the availability of a broad range of remedies under the code is not constrained by any time limitations of the kind that are found in Bill 162, the two years, the one year and so on. Under the code, you should know that the only time limit that is found is of a procedural nature and it starts running when, for example, the employer refuses reinstatement, and it expires after six months.

That time limit, however, is discretionary. It depends on proof of a prejudice to the employer and good faith on the part of the employee and is often extended by the commission in order to get at the real substance of the dispute in the case. So there is no absolute time limit, and clearly there is no time limit which hinges on the date of injury, the length of employment and so forth.

1610

Our conclusion with respect to the reinstatement obligation is that the commission agrees with the new focus on the employer's obligation to reintegrate injured workers into the workplace. We recognize the role that the Workers' Compensation Board has traditionally played and will continue to play in assisting the reintegration of injured workers into the workplace through its vocational rehabilitation programs. However, the creation of a new enforcement mechanism within the workers' compensation system with regard to the duty to accommodate injured workers will lead, in our estimation, to administrative confusion and inconsistency between the board and the commission. The result, in our respectful view, will be an inefficient and ineffective resolution of disability complaints.

We believe that the public interest would be better served by building on the existing expertise and infrastructure at the commission, rather than creating overlapping jurisdiction and new enforcement powers in the board. As I have stated, it must be recognized that the broad remedies available under the code are such that an aggrieved worker will stand to benefit from going to both places, and will often do so.

With a view to ensuring an effective and efficient public policy response to strengthen the rights of disabled workers to reintegration in the workplace with dignity and respect, we make the following recommendation: that enforcement of any new or additional reinstatement rights for disabled workers should be incorporated into the existing code jurisdiction.

This will provide a single source of resolution for those workers seeking reinstatement or other forms of accommodation to allow them to return to their jobs following injury. It will avoid the emergence of conflicting standards administered by the commission and the board, and frustration on the part, we believe, of both workers and employers with having to go through two parallel adjudicative processes to resolve one issue.

As well, it should not escape notice that the employers through their deductions, of course, pay for the administration of the Workers' Compensation Board and would at the commission, in many cases, be required to employ counsel at their expense as well. For workers, we have the problem of going to two different places and the potential for delay and blind alleys that are inherent in that, and of course for both parties there is the potential for forum shopping which arises in any situation where there are alternative remedies.

There are a large number of situations already in which the commission and other boards, agencies and ministries have overlapping jurisdiction and it causes duplication and problems already, as well as being, in our view, a duplication of public expense at a time of constraint which is unjustifiable for that reason alone. In our view, that trend should be curtailed rather than extended.

Let me deal now with the age distinctions and the benefit structure. In

establishing the new dual award benefit system, Bill 162 introduces age distinctions in two areas that give rise to concern from our perspective: the calculation of the noneconomic loss payment and the establishment of a retirement benefit system.

In the commission's view, these provisions on their face are inconsistent with the code's guarantee against age discrimination in the provision of services. Moreover, and more generally, they appear to run counter to the current trend in public policy away from such arbitrary and stereotypical assumptions regarding a person's needs and capabilities, and towards more individualized and sensitive assessments. This is illustrated by the code's approach to the accommodation of disabled persons that was described earlier.

The Bill 162 proposals regarding noneconomic loss payments are found in subsection 45(1), which provides for payment for noneconomic loss to workers who suffer what is called "permanent impairment" as a result of an injury. Permanent impairment is then defined.

The maximum amount of the payment varies according to age. The amount is increased by \$1,000 for each year of age of the worker under 45 years, to a maximum of \$20,000, or decreased by \$1,000 for each year above 45 years of age, again to a maximum of \$20,000. What that means is that the maximum for someone who is 25 or younger will be \$65,000. The maximum will be reduced by \$1,000 per year of age to the age of 65, where it will be \$25,000.

Our understanding is that this scheme is intended to reflect a variation on the basis of age that is justified by the rationale that a younger worker will suffer any given injury for a longer time than an older worker. Therefore, the compensation should increase accordingly. Nevertheless, such provisions introduce age distinctions that pose a potential conflict with the code's prohibitions against age discrimination.

Clearly, the \$1,000 per year is not based on any evident actuarial principle, but rather on what might be termed an approximation of such principles. In our view, it should be possible to design a scheme that more closely addresses individual circumstances in the case of an injured worker rather than determining his compensation on the basis of membership in a particular age group or class.

It should be noted by members of the committee that regardless indeed of our views on this issue, if the bill is passed, it will certainly be open to a claimant to file a complaint under the Human Rights Code which, as we have indicated, takes precedence over the Workers' Compensation Act and which would require investigation and, we feel, an adjudication on these issues that is likely to result in the conclusion we have stated.

With respect to retirement benefits, the bill establishes a new retirement benefit system for injured workers who receive compensation under the preceding section. It provides that the board is to set aside funds equal to 10 per cent of every payment made to the worker under the previous section into a special retirement fund which then is used to provide an appropriate retirement pension to the worker upon reaching 65 years of age, at which point payments of wage-loss compensation are to be discontinued.

We understand again that the rationale is that a new retirement pension is to insure injured workers against a loss in their capacity to save for retirement. Once again, however, on their face the provisions appear to

contravene the code's protections against age discrimination. In our view, they reflect the outdated assumption that workers will no longer be employed at age 65 and are automatically retired from any sort of employment at that age regardless of their individual capabilities, skills and financial obligations. That is not the practical reality of workers in Ontario. Many of them continue to have rewarding and productive employment well past the age of 65 years.

Our conclusion then is that the age distinctions give rise to significant concerns about their potential conflict with the code. More generally, apart from a legal conclusion, to the degree that they incorporate stereotypical assumptions regarding a person's needs and potential capabilities based on age the proposed amendments are inconsistent with the spirit of the code and in that respect are inappropriate to the Canadian society of the late 1980s.

We recommend that the benefits structure be redesigned to eliminate the age distinctions in the calculation of the noneconomic loss payment and the establishment of a retirement benefit system and to ensure that compensation levels are determined by neutral factors that do not give rise to the human rights concerns which we have stated.

At the conclusion on page 13, I have simply restated the conclusions which have been described earlier. With that, I conclude my formal presentation and would welcome your questions.

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Mr. Chairman: Thank you, Mr. Anand. I wish we had the whole day to discuss your report.

Can I ask you one question? Other members have indicated an interest as well. What is true about the Human Rights Code and this bill that is not true about the Human Rights Code and the existing legislation in terms of employment of injured workers?

Mr. Anand: There is no specific right of reinstatement in the existing bill that, as I have attempted to indicate, potentially conflicts with—

Mr. Chairman: Just because it is not there.

Mr. Anand: Because it is not there. There is no provision which conflicts in the way that this does and overlaps with the code jurisdiction.

Mr. Chairman: Because this one lays out certain rules, and the existing legislation has none.

Mr. Anand: That is right. The existing legislation, if you like, leaves it to the code.

Mr. Chairman: Right.

Mr. Carrothers: I was interested in your presentation here and I want to follow it up because you were talking of a role for the commission that I had not quite thought of myself. I sort of thought that if one had complaints, one would follow them up through other forums that are available and that your commission is there to catch those areas where there is no

particular forum. Yet you are not really the primary place to resolve a dispute.

Also there is a principle, I guess, in our various administrative tribunals of having particular tribunals very expert in certain areas. I want just to follow up that particular thought with you in terms of your expertise vis-à-vis the Workers' Compensation Board in dealing with the questions of re-employment. These would be largely medical questions, for instance, physical ability, the extent of an injury and so on, which, of course, is what the board has been dealing with for 10 these many years. I am just wondering what you would have in your board that would give you more expertise than they have to deal with this question.

Mr. Anand: I would put it somewhat differently. We are not here to engage in a competition with the Workers' Compensation Board, and I do not want to be understood as that. They clearly have significant expertise in the area under their jurisdiction, and I would hope that the same could be said of us.

That having been said, it is perhaps implicit in my comments that those jurisdictions do significantly overlap. At the present time, in terms of the expertise that we are talking about—they do not overlap in terms of legislative provisions, which is my point in being here with respect to those—41 per cent of our complaints relate to disability today, as I stated earlier. Most of those complaints, almost by definition, raise medical issues.

The vast majority of those complaints relate to employment. The figure across the commission is 80 per cent, and it is in fact higher with respect to disability. The sum total of that is that we are dealing on a day-to-day basis with issues of medical expertise and as they apply to such factors as essential duties of the job, accommodation, what is available to an employer in terms of technical changes to a job or the workplace in order to accommodate an injury. All of these are part of the day-to-day work of the commission at the present time.

Mr. Carrothers: I wonder how many cases you have had then. I can understand where you would get into questions of employment with people who have physical disabilities and so on, and that is where I have really seen your commission operating.

You now have someone who has an injury. The question on the table is going to be, what can that person do physically? What kind of job can he do? You have to look at a job description. You have to look at the physical disabilities. You have to understand what he can do. It seems to me such a very different question. This is the very question the board dealt with, and I guess I am having trouble understanding where you would even have the experience.

I am wondering how many cases you have had that specifically deal with an injured worker and the question of his re-employment as compared to someone who suffers a physical disability in a wheelchair or something and is perhaps not being treated fairly.

Mr. Anand: I do not have precise numbers. As I have indicated, the vast majority of disability complaints relate to employment.

Mr. Carrothers: I know that. My experience with your board has been, I mean, discrimination. It could be those types of things. Someone in a

wheelchair is not given a job because he or she is thought not capable of sitting at a typewriter, that type of thing. But this would be specifically someone who is injured and the point at issue is probably going to be, what can that person reasonably do? That seems to me a very different question. It is something I am sort of surprised you would claim you deal with all the time. I am just curious how many cases you have dealt with.

Mr. Anand: Let me address it this way. I think to some extent it is the end of the telescope that you look into. You can look at workers' compensation questions from a human rights standpoint or you can look at human rights questions from an injured worker's standpoint.

The fact is that the terms that are being used in Bill 162, "essential duties" and, as we understand it, "accommodation," if that is to be incorporated through the amendments that the minister announced, those are words that entail investigations and inquiries which have been carried on by the commission for many years and which have not heretofore been within the Workers' Compensation Act. That may be one answer to your question.

Mr. Carrothers: Except that you are not able to sort of indicate how many with injuries you have dealt with. I guess what I am looking at is—

Mr. Anand: Can I just finish, please?

Mr. Carrothers: Yes, sorry.

Mr. Anand: One of the more significant cases, which has been used as a model by employers in the workers' compensation area as well as the human rights area, is a case involving Mr. White at the Liquor Control Board of Ontario in which he suffered an injury on the job—I will cut short the facts—which prevented him from lifting liquor bottles and cases and so on. The LCBO had a rule which required a worker to be able to perform all of the duties of the job within a certain time period after declaring himself available. Mr. White was able to do essentially the light duties, cashier duties, as opposed to the heavier duties involving lifting.

This was a case that took place three or four years ago in terms of its final adjudication. It was one of the first cases under the amendments to the code dealing with handicap. It was clearly a workplace injury and reinstatement was the issue.

We took it to a board of inquiry. After the conclusion of the commission's case at the board of inquiry, the parties engaged in some settlement negotiation and settled the case between themselves—that is, the commission, Mr. White and the LCBO—on the basis that the accommodation that was appropriate to Mr. White, and indeed had been used for other employees, was that he be permitted to do the light duties aspect. There was a tailoring of the job in order to permit reinstatement. That is what these amendments are directly about.

Mr. Chairman: I am getting uneasy about the time here because of other representations.

Mr. Carrothers: All right, one final summary of the line of questioning, if I could, Mr. Chairman.

I guess on the point I was coming at, where was the most effective place to deal with these issues, I wanted to draw from the points you made about

public expenditure. I guess I was a little troubled when you seemed to indicate that your board was already up to speed on this, because I would have thought that in reality, vis-à-vis your commission and the Workers' Compensation Board, it is far more up to speed with dealing with issues of injury and assessing the ability of people to work than your commission, even though in that sort of case you have just outlined you will have dealt with it and I am sure that person probably had no other forum in which to dispute that.

Mr. Anand: There are many such cases. We have a special unit for the handicapped which deals primarily with employment issues arising out of disability: medical evidence, reinstatement obligations, tailoring of the workplace. That is their line of work.

No one is suggesting that reinstatement and vocational rehabilitation which is carried on by the board should not be integrated in the sense that there should be at least an initial determination by the board. What I am suggesting is that if there is an appeal or an adjudication, and if there is a higher right than what is in the code, it should be dealt with in the context of the code in order to eliminate further duplication.

Mr. Carrothers: I guess I somehow felt that the more appropriate place was there. You mentioned the rehabilitation. I would have thought that integrating it within their structure would work better than having the two involved, but it was curious. Thank you for answering the questions.

Miss Martel: Let me just get it clear, Mr. Anand. Are you saying to us that this section 54 in this bill concerning reinstatement should basically be chucked out the window because the Human Rights Code is far more effective in dealing with reinstatement than this will ever be?

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Mr. Anand: I am suggesting that the enforcement mechanism, if there is going to be a reinstatement obligation of that kind, should be inserted in the Human Rights Code.

Miss Martel: So how do we deal with the question that the minister has stated on several occasions that the three principles of reinstatement, rehabilitation and the dual award system are key to this bill and we will have only minor tinkering with those kinds of items? Do you have any suggestions on how we can make this better, given that the minister is quite intent on having it the way it is?

Mr. Dietsch: That is not true.

Miss Martel: That is true. Read the transcripts of the government agencies committee.

Mr. Anand: As I stated at the outset, we do not approach this bill from the standpoint of analysing all of the technical provisions and seeking to suggest a better scheme. What we approach it from is the standpoint of what implications it has for the Human Rights Code and the commission. Your question, while is obviously an appropriate one, is not one we have come here to answer. We come to answer what we view as the potential negative implications of whatever the mechanism is, with whatever its features, being placed side by side with the existing code.

Miss Martel: What we are certainly going to see, if this goes

through in the present form, is all of our workers who do not get any satisfaction under these streaming right over to the human rights commission to go through the code there, a code which is much more protective than this piece of legislation is.

Mr. Anand: If they have not done so already, in the sense of starting in two places.

Miss Martel: All right. Can I ask about the age discrimination as well? I raised some concerns over this during the debate on second reading. What do we do in the case of a worker who receives a pension for noneconomic loss and says he has been discriminated against because he is 55 years of age, he goes to the Human Rights Commission and the commission rules in his favour and agrees that he has indeed been discriminated against, on the value of the money he has received, because of his age? Are we then back to the board to make the changes that are going to be required or would you go directly to the employer to start to sort some of that out?

Mr. Anand: It is a difficult question to answer, although it is obviously a very good one. I do not want to dodge your question, but I have to say that the code overrides other legislation, as I have said. If other legislation, such as this bill, if and when these provisions come into force, is found to contravene the code, it becomes inoperative, so that whatever the criteria are under the Workers' Compensation Act would not apply at all. You would be left potentially with a vacuum, potentially with a discretion on the part of the board, potentially some other result. But, if you understand what I mean, it is neither for us nor for a board or a court in that case to substitute another scheme, but rather simply to conclude that there is a violation.

Mr. Chairman: Would you allow a supplementary from Mr. Brown?

Miss Martel: No problem, but I am just unclear. Does that mean all you can do is make a recommendation to the board that this is inappropriate and leave it there?

Mr. Anand: No.

Miss Martel: What recourse does a worker have then?

Mr. Anand: The result of adjudication under the Human Rights Code, if there were an inconsistency, would be that the provision of the Workers' Compensation Act would be invalid. There is no recommendation; it would be legally invalid.

Mr. Brown: On your whole argument about age discrimination, I am confused on whether it revolves around the fact that it is not actuarially correct or whether it is just because of age. If the act said, "We will give a worker \$100 a month until age 65," is that fair or is that not?

Mr. Anand: That does not appear to violate the code.

Mr. Brown: So if it were actuarially correctly done, because all benefits can be done on an actuarial table—

Mr. Anand: Sorry, \$100 a month until age 65?

Mr. Brown: Yes.

Mr. Anand: Well, age 65 would be a problem under the code. Leaving aside the amount, which is not a human rights issue under the code, \$100 a month for the rest of one's life would not involve the age discrimination provisions of the code.

Mr. Brown: But with any benefit like that, you can cost that—

Mr. Anand: That is not an actuarial issue; \$100 a month is not actuarially based.

Mr. Brown: Yes, it is an actuarial issue because obviously you can cost it to begin with. To get \$100 a month for however long, when you are dealing with a large group of people, you know it would cost you—I do not know what the figure would be—\$15,000, for example. On the other hand, if you happen to be 60, the cost of that benefit may be \$5,000 or \$6,000, if it is actuarially correct. My numbers may be way out.

Mr. Anand: I do not want to be misunderstood about this.

Mr. Brown: Yes. That is what I was unclear about.

Mr. Anand: If that scheme that you have just outlined were based on arithmetic calculations which began for the premise that is in this bill—that is, a greater lump sum at an earlier age and a lesser lump sum later—and it is just then unpacked into periodic payments, then the same objections would apply.

Mr. Brown: No, I—

Mr. Chairman: Mr. Brown, I am going to have to interrupt you, I am sorry. We are getting into a very serious time problem with two other groups to appear.

Let me ask if members of the committee would be interested in this: Obviously this is an important presentation and there is an important principle at stake here. I think all members would agree that when we come to the clause-by-clause debate, if there are amendments to entertain dealing with this part of the bill—if there are—we could then consult with Mr. Anand again if he were willing to do that. Would that be acceptable to the committee? I think we had better move on this afternoon. Is that agreeable to the committee?

Miss Martel: May I just ask a question? Are you saying that we can bring him back at that point in time or only in the situation of amendments? I think there are some important principles being raised here.

Mr. Chairman: I am talking about the question of amendments. If we start bringing groups and organizations back this early in the process, we are going to be in some scheduling difficulty greater than we are in now.

Mr. Carrothers: Could I clarify it? Are you talking about whether there are conflicts between the Human Rights Code and this legislation, in Mr. Anand's opinion?

Mr. Chairman: If, when we get to the point of dealing with amendments to Bill 162 in the clause-by-clause debate, not the public presentations, and the committee wishes to get the opinion of the human rights commissioner dealing with this, then we would do so at that time. That is all I am saying.

Mr. Dietsch: I think we will have to take that under advisement. I think that is why we have legal counsel when we are doing clause-by-clause.

Mr. Chairman: Fair enough. Is that agreeable? Okay.

Mr. Anand and your colleagues, thank you very much for your presentation this afternoon. We appreciate it. It gives us much food for thought.

The next presentation is from the Canadian Auto Workers—the CAW council, I believe it is known as.

CANADIAN AUTO WORKERS

Mr. Nickerson: Representing the Canadian Auto Workers are: myself, Robert Nickerson, national secretary-treasurer; Jerry Flynn, our staff liaison to the CAW Workers' Compensation Board committee; Jim Crocker, the chairperson of the WCB committee of our council; Gary Parent, a member of the committee from Windsor; and Al Bratton, secretary of the committee.

We have provided the committee with copies of our brief. In commencing the remarks, I am going to have Jim Crocker go through the brief.

I want to make reference to the fact that some statements were made yesterday by the Minister of Labour (Mr. Sorbara) which I have to raise today because it was somewhat disturbing to us, especially, I would say to the committee, since they heard the remarks of the previous presentation in which Mr. Sorbara was saying that he thought much of the opposition and anger to this bill, which is long-standing, was directed at the workers' compensation system as it now exists.

I just want to make sure we understand that from the perspective of the Canadian Auto Workers, it is not in that direction. It is directed at the bill itself and the problems we see with the bill. I think that is obvious in the presentation that was made previously and we will also deal with some of those areas.

At the same time, I want to say that we are disappointed in the fact that we, as labour, did not get any chance whatsoever to have input, either through the Ontario Federation of Labour or our own organization, into this bill on changes to the WCB. We have since had consultations and have been asked to sit on a green paper, after the bill had been introduced.

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Of course, the bill is going to affect a number of our members—all of our members at one time or another, if they are in fact affected by an injury at the plant.

One other area that I would like to raise—it was touched on earlier and a motion was passed—is the request for standings. We in our union had requested over 50 local unions for standings in different cities in Ontario. Having over 120,000 members, we felt it was very important that we have standings in our cities so that people could make representations to this committee. We have been granted four standings, in London, Windsor, Toronto and Ottawa. We have been denied standings in St. Catharines, where we have over 10,000 members in the large local. In Oshawa, where we have 23,000 members, we understand, in fact, the committee standings have been cancelled.

Those are some of the issues that we want to touch on. I would ask Jim Crocker if he would present our proposals to you.

Mr. Crocker: I will read the brief into the record. Thank you for the opportunity to come before you today to present our concerns on Bill 162, your proposed amendments to the Workers' Compensation Act. The Canadian Automobile Workers represents approximately 120,000 workers in a wide and diverse range of industries and offices throughout the province.

Our concerns about Bill 162, however, exist far beyond our own membership. There is a constant potential for injury for anyone who accepts employment in this province.

Our brief, for the most part, will deal with the contents of Bill 162. However, we would be remiss if we did not share our disappointment in the many items that were omitted from the proposed legislation—e.g., the Minna-Majesky report—and to voice our concerns about the methods used to present this very important piece of legislation.

There is a vast network of injured worker organizations, unions, legal clinics, unemployed help centres and ethnic groups in this province that are never consulted and questioned about their concerns. We must remind the committee that the workers in this province have a large stake in this proposed legislation. Workers gave up a lot in 1915 when they traded the right to sue their employers for a just, no-fault compensation system when we are injured in our workplace. We in the CAW feel strongly that the ministry should have at least consulted or asked for some suggestions from all the interested parties prior to the introduction of such wide-sweeping changes.

Cost containment appears to be the sole motivation for this legislation, as more workers are deemed to be able to work at phantom jobs that, for the most part, are not available, even if they could do the work.

It is no wonder we are sceptical when the president of the Workers' Compensation Board, Alan Wolfson, is quoted as saying, "We have to learn to share the pain and manage the misery."

We would remind the committee that the WCB committee of CAW council comes before you today as a body made up of individuals who, for the most part, have a vast amount of experience dealing with the compensation board. They are well aware of the problems with the present system and see nothing in these amendments to rectify their concerns. Their fears are that the proposed legislation will make a poor system even worse. The committee is rightfully proud of the fact that it was responsible for many of the initial investigations that brought about the Minna-Majesky report and is very disappointed that, for the most part, those all-important recommendations have been ignored.

Bill 162, section 36, proposed section 10: These proposed changes to subsection 36(13) do not represent a change in board policy. We fail to see why any Canada pension plan or Quebec pension plan would be deducted from a worker's benefit or used in calculation of any WCB benefits.

Section 40, proposed section 11: In section 40, the CAW is of the same opinion. Our position is the same as on section 36. As we are dealing with two separate systems, injured workers should not suffer a carve-out of one against the other. We traditionally pay for all of these benefits at the bargaining table and therefore justifiably anticipate receiving these benefits when we need them.

Section 41, proposed section 12: Where the proposed increases are welcome, they still fail to adequately reflect some of the higher industrial and construction wages in our province. Professor Weiler, in his report, suggested a maximum average of 250 per cent of the average industrial wage. We in the CAW see no reason for a cap of any sort.

Section 45, proposed section 15: Injured workers have been critical of the board's pension schemes for years. What they wanted was improved lifetime pensions. What they got was abolished lifetime pensions. The infamous meat chart is still with us, with no improvements. Board doctors or appointed medical practitioners will play an even larger role than they have previously in our pension ratings.

The glowing example set out for us by the ministry would lead us to believe that all injured workers are going to retire in wealth, which is far from the truth. The Ministry of Labour likes to report a figure of \$65,000, which in our opinion is still quite inadequate for a young worker under the age of 25, but on close examination, to qualify for that a worker would have to be under 25 years of age and totally disabled. We in the CAW are aware of very few cases where the worker is deemed 100 per cent disabled.

The norm is closer to 10 per cent, and based on the information we have, that would entitle an injured worker under 25 years of age to approximately \$6,500 to aid him or her in managing with his or her disability for the rest of his or her life. Older workers, of course, would receive even less. They may qualify for other small financial benefits from the board, but we will be talking about that later.

The CAW finds the meddling by outside doctors to be totally inappropriate in subsections 45(5) through 45(11). The CAW has maintained for years that the doctor who is most qualified is the injured worker's own personal physician. That person has already been agreed upon by the board under clause 52(1)(b). We also find it very regressive to place time limits on workers' disabilities, and then to limit their right to apply for further assessment is appalling, especially for younger workers who may face a whole host of problems before they finally leave the workplace.

This pension is supposed to be awarded for noneconomic loss, but it fails drastically in compensating workers for loss of enjoyment of life. If it were coupled with the present pension system, it might represent some dignity. However, once we tie it to the proposals in section 45a, we see that most workers will not qualify for any respectable security.

The provisions called for in the proposed section 45a, as set out in section 15 of the bill, seem unclear to us. Is the board going to allow only one six-month extension for workers who have not recovered well enough to return to the workplace prior to these assessments?

The labour movement has been highly critical of clauses 45a(2)(a) and 45a(2)(b), and rightly so. Our experience has not been pleasant. The proposed deeming method will be used to calculate what the board considers a worker is capable of earning, even though such jobs are not available. In most cases it will be shown that injured workers have suffered no wage loss and therefore will not qualify under this section. This proposed section gives the board far too much discretionary power. As with various other portions of the bill, the minister chooses to discriminate against older workers once they reach age 65.

Whether subsection 45a(3) will hold any hope for workers will depend on

the regulations set down in the new section 69, as set out in section 20 of the bill. However, we are not holding our breath. With that many variables, most workers will be deemed to earn X amount of dollars at a phantom job and therefore will not qualify under section 45a for future loss of earnings.

We can think of no way clauses 45a(3)(a) through 45a(3)(f) can aid an injured worker, no matter what the regulations in section 69 say. We shudder at the thought. There are enough ifs, ands and buts in this proposed section that workers will be deemed all over the place. If the inconsistencies we have experienced with the board in its present subsection 45(6) policy are any example, injured workers will indeed experience even harder times ahead. Municipalities in the province are warned to take heed. This section will take many workers off WCB benefits and place them directly on welfare rolls.

It certainly appears that an injured worker's fate will be determined more by time limits on subsections 45a(5) to 45a(8) more than physical conditions.

The only thing workers can be sure of under the proposed section 45b, as set out in section 15 of the bill, is that once they reach age 65 they will lose any pensions they were fortunate enough to get under section 45a. It is unfortunate that there is no flexibility in this section to allow board pensions to integrate with other existing programs. How is an injured worker expected to prepare for retirement when he has no idea what he will be receiving from the board after age 65?

The proposed section on vocational rehabilitation, section 54a as set out in section 19, does nothing for existing workers and next to nothing for workers covered under the proposed amendments. Workers are tired of dead-end jobs, lack of retraining, inappropriate or nonexistent counselling and delays. Vocational rehab has been used for years to get workers off benefits and nothing more. Section 54a does nothing to change that.

The Minna-Majesky report has been completely ignored, existing workers are ignored and the 45-day intervention will only force workers back to unsuitable employment more quickly, to get them off the total temporary benefits, with little or no concern for their economic or physical wellbeing. As little help as there is in this section for workers, to have time limits placed on the board's assistance is certainly not acceptable. That is in subsection 54a(4).

On section 54b, it can be argued that close to 50 per cent of the workers in Ontario are exempt from section 54b by the language in clauses 54b(1)(a) through 54b(1)(c) and that the rest of us get very little. Employers' obligations are limited to two years, which would exempt many seriously disabled workers who need this protection the most. Job security is guaranteed for only six months. Then employers can terminate placed employees by eliminating or modifying the jobs they were placed on.

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Reinstatement does not consider those presently needing placement, seniority rights are ignored, job modification is not discussed, ergonomics are forgotten and the all-valuable recommendations of the Minna-Majesky report, which were assembled at considerable expense to the taxpayers, remain on the shelf to gather dust in the archives.

We want to make sure the committee is perfectly clear that the CAW feels

employers have an obligation to reinstate injured workers to suitable employment. In doing so, seniority provisions of collective agreements must be maintained and time limits should be eliminated.

In our analysis of Bill 162, we have reached the conclusion that the proposed section 69, as set out in section 20 of the bill, may be the most damaging of all. Where many of the previous sections have raised our concerns, they may or may not be acceptable based on the board's regulations established in section 20. This, however, appears to be putting the fox in charge of the hen house. If past practice holds true, workers can expect little from the board bureaucrats.

Proposed changes to these amendments: On January 19, 1989, the minister announced some proposed changes. It is difficult to comment on these changes because they have not been presented in any official form. However, we will offer a mini-critique in case they eventually find their way to the Legislature.

The first change, to take the employer out of the selection of doctors for board pension appeals, is acceptable. However, our earlier position, to take those decisions from board doctors and place them back in the hands of injured workers' personal physicians, is much more appropriate. Allowing the board to appoint from its own roster is not the answer.

Next, giving workers back the right to appeal should not be heralded as a great concession. One of the bases of compensation through the years has been that in fact all decisions are appealable. Certainly any break in that tradition would meet with stiff opposition. The minister merely gave us back what we already had.

On the minister's proposal to oblige employers "to offer injured workers modified work in keeping with the spirit and intent of the recent changes to the Human Rights Code," we must get more information prior to making serious comment on this section. However, the whole reinstatement question falls woefully short of expectations. If the minister's intentions are to wait until after these hearings to officially introduce these changes, then he is making a mockery of the parliamentary system. How can anyone comment on changes when we have not seen the official language?

As much could be written about what was omitted from the proposed legislation as has been written about the proposed legislation. Board services throughout the province are in a shambles. Delays are common at all stages and are at an all-time high. Morale of board employees could not be lower. Recognition of industrial disease is short of expectations and all decisions are still made in Toronto.

In thanking the committee for its time, let us make the CAW position crystal clear: Bill 162 should be totally withdrawn. It does nothing for the workers we represent and falls far short of our expectations. The committee should recommend that the ministry consult with all the interested parties and draft a serious long-range plan for compensation in Ontario, one that will offer injured workers the dignity they deserve, and were promised in 1915, when they find themselves injured in the workplace.

We thank you again for your time and consideration and trust the committee will seriously consider our presentation and recommendations. Respectfully submitted by the CAW.

Mr. Nickerson: If I may, I will mention a couple of areas of concern we would like to stress a little more strongly; that is, the whole question of sections 54a and 54b and the question of rehabilitation. My understanding is that it is now being driven to the private sector area as it relates to private clinics that are being established around Ontario. The Minna-Majesky report in fact had made recommendations to take the present rehabilitation centre in Downsview and split that up.

The arguments that had been put in by our union and by a number of people when they had hearings on that were to have that centre available in different cities so injured workers did not have to drive long distances to go for rehabilitation, to put rehabilitation in where it could be used properly in those cities so people could be rehabilitated to go back to work in some form of work in the workplace.

It is now being offered, we are told, by the Workers' Compensation Board to any clinical group that wants to set up a clinic in cities in Ontario. They may come in from the United States or they can come in from wherever they want and set up a private clinic. Those clinics are now going to be available and not under the auspices or control of the WCB. We have some serious concerns about what is happening in that particular area.

I just want to touch on section 54b, which is the right to a job. It seems to me we have been making this argument, and we have been successful in a number of our collective agreements where the employer is obligated under WCB and has to take that employee back to work. There are restrictions. The restrictions normally get to where the individual has the right to re-employment for the life of his seniority with that employer. That is the only restriction on that.

It is difficult at times for us to try to place that employee back at work and argue with the employer to try to do that, but we are doing that on an ongoing basis. The point I want to make is that when an employee is working for the employer, there is an obligation on that employer if that individual injures himself. That obligation on the employer would be that he has to make sure the employee can get back into the workforce. If he cannot get back into the workforce, rehabilitation must take place for that individual and he must be placed in some job in the province. If it is followed through its proper perspective and the procedure that is laid out, then at least the individual is going to get back into the system.

Jerry Flynn wants to make a point on section 69.

Mr. Flynn: Section 69 gives far too much power to the bureaucrats at the board. We have no input into that. What happens is that about seven days before they make a change in the practice of the board, they mail something out to the people they call stakeholders. We begin to feel like tomatoes on stakes, ready for the picking. What they do is internally change the interpretation of what the act says.

In subsection 45a(5), in reference to the supplements, there was a general understanding of what that meant for a number of years in the province, and it worked very well. They then internally sent us a submission saying, "This is what we now think this means," some 15 or 20 years later. "We'd like your opinion within seven days." We gave them our opinion within seven days, and they said: "Thank you very much. We appreciate that. We still think we are right. We were wrong for the past 20 years."

Somebody has to have a serious look at the backroom boys at the Workers' Compensation Board and how they interpret that act. If they have all day to do that, they should really look at interpreting the act to the benefit of the workers, because that is who the act belongs to. The act belongs to the workers. That is the name of the act. It does not belong to the bureaucrats at the board and the people who sit up there earning tremendous amounts of money. It belongs to the workers and that is how the act should be addressed. All the concern should be for the workers, not for the people who are up there.

Let me go a little bit further: You have to know and understand that in 1915 the workers in this province gave up a hell of a lot to the Workers' Compensation Act. It seems to me that with this bill and previous bills of the Workers' Compensation Act, the workers in Ontario have been shortchanged.

Mr. Nickerson: On section 45, Gary Parent wants to address some remarks to the whole question of pensions.

Mr. Parent: Under both sections 45a and 45b, I do not think what you have proposed in Bill 162 has helped the injured workers in this province. In fact, we believe that with the deeming and the phantom jobs that are contained in the bill, you will not have many workers who will be deemed to be brain surgeons, particularly younger workers who are injured in our plants or offices. How are they now going to be brain surgeons, and how are you going to calculate that into making a wage and decent security for the workers?

We think that what the government is doing with what it has proposed under sections 45a and 45b is making no security for the injured worker of this province. The man or woman who is injured in this province, even as bad as it is in the present system, at least has some security as to what he or she is going to be making beyond age 65, whereas in the proposed legislation it is now stopping at age 65. As was pointed out in a previous submission, actually by the Ontario Human Rights Commission people who were before you, life does not stop at age 65. There has to be some sort of continuation of pension for the injured worker in this province beyond the age of 65, and it is not covered under section 45a or section 45b, where security can come into a person's retirement living.

1700

Mr. Nickerson: Just to wrap up, the other issue we want to leave with the committee is equal representation. We have a number of committees under the Workers' Compensation Board, such as the Industrial Disease Standards Panel, the palsy review committee, the vocational rehabilitation strategy implementation advisory committee, the medical rehabilitation strategy implementation advisory committee, the corporate board, etc. We feel very strongly there should be equal representation of management and labour sitting on those boards. We want to leave that with the committee for consideration as well.

Mr. Chairman: Thank you, Mr. Nickerson. I am sure there are some questions for you.

Mr. Tatham: I certainly appreciate listening to the CAW folks. We have quite a few people down in our area from the CAW. I appreciate the comments. I just wonder, have you looked at the situation in Saskatchewan? They have had a dual award system, I understand, for a few years. What have you found from what they have done and what are your comments?

Mr. Crocker: Yes, we have. As a matter of fact, I looked at it this morning. What we found, really, as we took a look at the last submissions the Saskatchewan board put together, was that it had some concerns about the dual award system too. I understand it was supported when it came in, but their experiences with it over the last few years have not been acceptable.

I think deeming is the major problem in that province, as it is in other provinces where deeming is part of the bill. Until they get that straightened out, my understanding is that labour in those provinces, especially Saskatchewan, has some major concerns.

Mr. Nickerson: In fact, the minister raised it with us in one of the meetings we had. We went out and made some inquiries in the labour movement. The labour movement is having one hell of a time with deeming in Saskatchewan. We also had some people in from Quebec and talked to them about the same question. They have the same problems with deeming in Quebec.

Mr. Tatham: Is that when the jobs go down, when there is unemployment? Is that the main problem?

Mr. Crocker: That is where the board gets to determine what job you may or may not be able to do, even though that job is not available.

Mr. Tatham: That seems to be the one kicker, does it, when the jobs sort of vaporize and you are looking for places for people to work?

Mr. Crocker: That is correct.

Mr. Tatham: Thank you very much.

Mr. Carrothers: I want to follow up on this deeming. I am interested in what you are saying because I had thought this was an improvement. It seemed to be moving, in the way this legislation worked, more into the realm of the way disability insurance works in the private sector, when you are dealing with the question of what employment a person can do and trying to answer what would be an appropriate kind of job to consider he was eligible for.

I wonder if you might explain to us in more detail how you feel this deeming is not going to work. It seems to me we have a broad body of jurisprudence in disability insurance dealing with the question of what a person might be able to do and how one determines what a person can do based on his injuries. You look at his experience, his education and so on. It would seem to me that is working fairly well; at least I thought it had. I would be interested in your comments. I wonder why you feel incorporating that kind of reasoning into this is not going to work in the same way in the workers' compensation area.

Mr. Crocker: The present legislation has some deeming in it. As we say in our brief, our experience with that has not been very good. We have had a lot of workers who have been deemed to do jobs that just do not exist, and as a result of being deemed to do that have had benefits removed. If these workers had those jobs, that would be a different story, but our experience is they do not.

They just take a look and say, "Okay, Mr. Crocker, with your education, your background, your mastery of the English language, we deem you to be able to do this job," whether that job is available for me or not, and, "Because

you are able, in our opinion, to do that job, benefits are cut off." That seems to be our experience with deeming so far under the present legislation, which as far as we are concerned is not as wide-sweeping as the proposed amendments, which we feel would be even worse.

Mr. Tatham: I see. I may be drawing from a body of experience in a different area. You are focusing on whether the job exists, not whether the kind of job they would indicate the employee might be able to do would be a reasonable job for him.

Mr. Nickerson: You have the same problem. Let's talk about a Chrysler worker working on the assembly line and earning \$16.53 an hour. That individual gets injured. He has been working there for 20 years. That individual has had nothing in relationship to anything except an assembly line for the last 20 years. Therefore, that person comes out of that assembly line, now is injured and cannot go back on that assembly line. But the employer takes the position that there is not a job he can find for that individual. What are we to do? Do we deem that that individual can earn now \$10 an hour in a service industry?

That is the problem we have with the deeming: the whole question of whether or not that individual is going to drop from the rate of pay that he has and the earnings that he has at a level. If it is \$16.53 an hour but based on what the individual could do in the present system that has changed in the last 20 years, he does not necessarily step up to the \$16.53.

Mr. Carrothers: All right. I guess we are talking about subsection 45a(3) here, are we not? That is the nub of the deeming.

My experience, perhaps in other types of disability insurance, given that example you had given, might indeed have that person deemed to not be able to find a job. In other words, you do not try to find another job; you are looking at jobs that would be similar to that of someone who has worked on the line for 20 years and what someone like that would be able to do. It is surprisingly narrow, what I have seen happen. I am interested in what you are saying, because I guess what I hear you saying is that the deeming you have seen the board do you are a little suspicious of, to put it mildly.

Mr. Crocker: It is happening today.

Mr. Carrothers: Yes. I guess this 45a(3), these criteria which you set out, which tend to be this kind of experience employment thing that I have seen in private insurance, which you may be familiar with because there may be that kind of insurance for your people as well, seemed to work fairly well. There were many cases where you would find someone disabled, not able to do a job even and not look for that lower job, because you focus in as much on the wages and that sort of thing and that kind of status as on anything else.

Mr. Nickerson: That is not the experience we are having.

Mr. Crocker: We also have to remember that the proposed section 19, of course, is where it is very specifically laid out that they get to do the regulations for this subsection 3, and, of course, again for the record, sir, that is putting the fox in charge of the henhouse. It is not a workable system now—

Mr. Carrothers: Granted, until you see the regulations, you never know quite clearly. But I appreciate those comments, because they put a different perspective on it for me.

I wonder, Mr. Chairman, if I could just ask one other line of questions about doctors, because again I had seen this use of independent doctors as being a real improvement. You are talking about the worker's own physician being the best one to make the medical assessment of the worker's disability.

I am just wondering, would they necessarily have the expertise to do that? Most of them would be family physicians. Often you get into some questions where you need orthopaedic or other types of expertise. Would it not really be better to have these independent doctors that you could call to make that determination? In other words, to get away from a doctor who is either involved with the board or the worker? Is that not really a better situation?

Mr. Parent: Well, the facts are that normally, if you get into an orthopaedic situation, that claimant has already been in treatment with his own orthopaedist.

Mr. Carrothers: Yes, which presumably would be an opinion relied on. But I am just wondering if this independent panel—

Mr. Parent: That is what we are saying.

Mr. Carrothers: —that you could draw from—

Mr. Flynn: That would appear to be a statement that would be relied on.

Mr. Carrothers: Yes.

Mr. Flynn: I can tell you very frankly, it is not. They will say: "Well, that's fine. Thanks for your opinion. Now let's go outside and we'll get a couple more and see if we can't find two more to prove your orthopaedic surgeon wrong. Then we will get on with it." That is the way it works. Let's not kid ourselves.

Mr. Carrothers: No, but I thought I had understood this legislation to be talking about how you get a panel and then you can draw from that. I had really thought it was an improvement, because you would be getting this independent doctor—independent of either side, if you will.

Presumably, by the time you get to a dispute, you have board doctors with one opinion and you have the worker's own doctor. You have a kind of stalemate of expertise, if you will, and now you have this mechanism of going to a third independent. I am wondering if that is not an improvement. I would have thought it was. That is all.

Mr. Parent: Where are we going to draw the doctors from? The employers will be making the choice and the board will be making the choice.

Mr. Carrothers: Do the workers not get to choose the doctor out of a panel?

Mr. Parent: Under the proposed legislation, there was nothing there for the worker, the claimant, the injured worker. It was the employer and the board itself.

Mr. Carrothers: Unless I have misunderstood, I thought there was a panel that you could choose from and it mirrors this kind of—

Mr. Parent: Appointed by the board and the employer. No input from the claimant or the worker or anyone else.

Mr. Carrothers: Okay.

Mr. Chairman: Mr. Carrothers, I will quickly give the last question to Miss Martel and then move on.

1710

Miss Martel: I have two questions. I will be brief. I would like to deal with the question you raised about how unfair it is for a worker at age 25 only to expect to go back and have his pension reassessed twice during the whole course of his lifetime.

I would like to ask you, Mr. Crocker, do you think that any physician in the province of Ontario is going to be in a position to decide what anticipated deterioration will occur with that individual and try and establish a pension on that basis?

Mr. Crocker: No, we do not, and in fact that is where we see the big problem. It appears to us that it is going to have to be some sort of guesswork on the part of the injured worker to try to assume when his deterioration is at the greatest. I do not know how a 25-year-old worker can do that. He may indeed not have any deterioration, but then again he may have considerable deterioration over his lifetime.

Under the present system, when the worker's doctor or personal physician determines that there has been significant deterioration, he can apply for an increase in his pension. Under the proposed system, to have, shall we say, two kicks at the cat seems highly unfair. They will have to time that perfectly to get any kind of maximum benefit under the pension system.

Miss Martel: My second question concerns rehabilitation. You mentioned Minna-Majesky several times, and I suppose I do not have to bring up with you the idea that one of its prime recommendations was that rehabilitation should be a mandatory right. I am wondering if you would like to comment on the principle that was adopted by Minna-Majesky and what appears in the bill itself.

Mr. Nickerson: What we were looking at very seriously is the whole question, when it came down to the Minna-Majesky report, of putting into place the proper rehabilitation that is necessary. Employers will raise the question with this board and will continue to raise the question about the cost of the WCB. At the point in time that we have an individual who is injured and we cannot do the placement as necessary, somebody has to make that determination. We understand the process, and that has to happen.

We find out that this individual then has to be rehabilitated, because he has to go through rehabilitation. At that point in time, let's move him to the rehabilitation centre. Let's start the process of talking to that person and trying to find out in what field, where we should be going, what we should be doing with that person. If consultation is necessary, we have no problem. Let's do it.

Let's have rehabilitation in the community that is under the auspices of the WCB, that people can go to and can be referred to, so that the WCB has control of this thing. Otherwise we are going to have individual clinics in place and all those clinics are going to do is function on the basis of trying to return that person to some kind of work, to get him off workers' compensation.

The purpose of the rehabilitation is to put the person back, hopefully wholly, in the workforce in Ontario. People do not want to walk around just receiving WCB benefits; they want to do something and contribute to society. That is what they want. They want that available to them. You cannot do that through the private clinics. The clinics are not going to do that. They are going to be in the hands of the employers who are going to try to report people off workers' compensation, to reduce their premiums. That is the reality.

Mr. Crocker: If I might just supplement that briefly, the proposed legislation does not give the worker the right to any kind of vocational rehab, which is a major concern of ours. That is what is happening now, in effect. I come from a very big plant. I know of very few workers who have been accepted by the vocational rehab section of the board. Most of them are just told, "For some reason—your English isn't good enough, you're too old, all kinds of good reasons—you're not going to be entitled." This proposed legislation does nothing to improve that.

Mr. Chairman: Thank you very much from the committee. I remind members that there are some votes in the chamber at about 5:45, I believe.

Interjection: Are you sure there are some votes?

Mr. Chairman: I think so. There had better be or there will be a revolt in our caucus.

The next presentation is from the Ontario Chamber of Commerce. We have appearing before the committee Mr. Gray, Mr. Kearney and, I think, Mrs. Rehor.

ONTARIO CHAMBER OF COMMERCE

Mr. Kearney: Thank you. I am Robert Kearney, the president of the Ontario Chamber of Commerce. I have with me, as you say, Elaine Rehor, the assistant general manager of the Ontario chamber and Wallace Kenny rather than Doug Gray. Mr. Kenny is the vice-president of our employee/employer relations committee at the chamber.

The chamber, as you know, is a voice of business in the province. It represents the views of some 60,000 business people in the province, both directly and through the 160 local chambers and boards that we represent. We are delighted to have the opportunity to put before the standing committee our views on what we regard as a very important subject to employers and employees throughout the province. Mr. Kenny will in fact handle our brief to you today.

Mr. Kenny: The Ontario chamber, having reviewed the bill, is in a position to lend its support to the government's efforts in attempting to adjust the compensation system in terms of workers who become permanently impaired as a result of injury. We believe that the dual award system that is being proposed is a significant improvement over the existing structure. It is obviously not perfect, but we think it moves more closely towards a more typical, damage-oriented form of compensation than the existing bill has in it and is along more traditional grounds, much as Mr. Carrothers was indicating earlier.

We think that dual award system, combined with the reinstatement and re-employment rights which are included in the bill, should create a more balanced and equitable system and get more people back to work, which is obviously the main intent of everyone here. Certainly we share the comments of Mr. Nickerson with respect to that.

There are however—there is always a catch to these things—certain sections of this bill which we do have some concerns with and we think ought to be looked at more closely in terms of some improvements. Perhaps it would have been helpful if we could have focused our time on the positive aspects of the bill, but we think that with the limited time we have, we are probably better off to talk about some of the things we have concerns about.

Subsection 5a(1), Employment benefits: The subsection, as I am sure you are aware, provides employees the right to continue to receive benefit payments from their employer if they have been employed for up to a year, I believe. This section, as written, could be interpreted to require employers to maintain benefit contributions for the period in question even though the worker, had he not been injured, would have had benefit contributions discontinued.

There are of course a number of different circumstances in which that might occur. We have suggested a couple here: one being a circumstance where the employee was a seasonal worker and hence his benefit contributions would have continued for only a certain period of time; another being a circumstance where the individual's seniority is such that had he been at work he would have been impacted by a layoff or something of that nature.

As I perceive, the government is attempting to move this legislation towards a more damage-oriented form of remuneration, i.e., "What has the employee lost? We should be attempting to replace that." Then it would seem inappropriate for us to overcompensate in some of these areas. Clearly if the employee would have, had he been at work, continued to receive benefit payments through this period, the chamber thinks this is an appropriate change to the act. But where it is a circumstance where it is no longer the injury which is causing the loss of benefits, we think that is something the bill ought to address.

Clause 45a(3)(e), Permanent impairment and economic loss: Presently the amendments to the act require that the board consider any disability payments the worker may receive for injury under the Canada pension plan or the Quebec pension plan. Again, that seems to be focusing on the concept of what the employee lost as a result of the injury, and we are going to take into account other insurance schemes that he might be able to take advantage of to bring him back up to a reasonable level.

There are disability pensions relating to employment, other than CPP or QPP, which the employee may be able to utilize in order to supplement his loss of income. We see no reason why those should not be taken into consideration also in terms of trying to make the employee whole and to ensure that he is not overly compensated in that regard.

1720

What we do not want is a system where the workers' compensation payments, along with other payments, encourage the worker not to rehabilitate himself, because he is indeed in a position to be making more money than he might otherwise have been making. I think the government should be sensitive to those kinds of things.

Section 45b, Retirement income: Section 45b sets out a system providing injured workers retirement pensions and requires that an additional amount of 10 per cent of every payment made to the worker for future loss of earnings be put aside for pension purposes. Again, one can assume that that is in order to supplement the loss of the worker's ability to work, and hence contribute to a pension plan had he been working.

Again, for the very same reason, one should assess at that time whether or not the individual, by being injured, has lost the ability to receive a pension. There are a great many plans that employers have in the province that continue pension contributions for injured workers, so that the injury does not impact on the worker's ability to receive a pension at age 65 or such earlier time as the pension plan may allow.

Using the concept of mitigation again, and what exactly the employee has lost as a result of the injury, we think, following that theme, those should be taken into account and the act amended so that, if the workers are in a situation where they are not losing an existing entitlement to pension contribution, then this 10 per cent could be waived or indeed supplemented up to that level if that is the case. But we think that kind of thing ought to be taken into consideration.

Subsection 54b(2), reinstatement rights: As I indicated earlier to you, we do support the reinstatement obligations contained in the act. However, the present wording of subsection 54b(2) does not adequately deal with a variety of circumstances in which such reinstatement may not be appropriate. We have had an opportunity, which I am not sure the committee has yet had, of reviewing the Toronto Board of Trade's submissions. I believe they are in their final draft stages and are appearing in front of you later this month. They have proposed some quite specific changes to subsection 45b(2), and we support their specific changes and the rationale which they have outlined.

On their behalf, I have included in our brief a summary of those changes—or actually, the specific changes themselves. I do not intend to wax eloquent on these changes for a lengthy period of time, but I wish to highlight for you some of the more critical aspects so you will understand where we are coming from and why the Toronto Board of Trade is also interested in these amendments.

If you will turn over the page, the first is, "The worker is prepared to accept and is available for reinstatement and re-employment."

This is something it seems should be reasonably obvious. If the person is not available or is not willing to accept, there should be an extinguishment of his right at the time when that becomes evident. You cannot sort of pick and choose on these things. The idea is to get the worker back to work.

The second is, "The worker provides the employer with sufficient medical and other information to allow the employer to satisfy its responsibilities under the Occupational Health and Safety Act."

If I can summarize, the main responsibility there is to take every reasonable precaution in the circumstances for the health and safety of your workers. It does mean that you must be assured that the worker is capable of performing in the workplace without further injury to himself or further injury to other workers. That will require a reasonable assessment of the medical information available. Hence there should be some qualifications, so that there is not a conflict between obligations that employers have under the health and safety legislation and the obligations they have here.

Third, "The worker is able to perform the essential duties of the position the worker held on the date of injury or is presently able to perform the essential duties of a position which has similar duties and responsibilities, requires similar qualifications and has the same compensation schedule, salary grade or range of salary rates."

Again, this is relating to reinstatement to his particular position and it mirrors the language of essential duties which is in the Human Rights Code. Again, it is to ensure that there is not a problem between the two pieces of legislation. Mr. Anand raised some submissions with you earlier. I was here to hear them and will be able to comment more completely on some of the things he said at the end of this, because I think he raised some important considerations.

Fourth, "A position as described in point 2 above continues to be required to be performed by the employer at the time the worker is able to return to work."

This, obviously, is reasonably fundamental. If an employer has downsized radically and does not have the kind of job which this employee was doing at the time he was injured, it does not make sense to require the employer to reinstate the job if it is no longer necessary. Obviously, some other job would be one that would have to be looked at in that circumstance. Yet, the way the legislation is at present drafted, there is an obligation on the employer to provide that kind of reinstatement. I do not believe that is the intention. Some clarification is needed in that regard.

Points 5 and 6 relate to seniority and to the balance of rights between the injured worker and other workers within a bargaining unit or, indeed, outside a bargaining unit. Almost any collective agreement in this province bases the recall rights on seniority provisions, and the more senior person gets the job if he is qualified for it.

This reinstatement provision does not take into account seniority as it is at present drafted. It would require the employer to bump an existing employee who may have more seniority and hence a greater right to the job than the employee who was injured. That is going to create a great amount of industrial relations confusion within the environment.

What the act does, frankly, is change the priority list. Had the worker not been injured, he would not have had the right, obviously, to bump a more senior employee. If the intention now is to give him a greater right, and replace an employee who would otherwise have had that right, I think that should be clearly stated. I do not believe that is the intent, but it is going to be a significant problem if it is not clarified.

Failing all of those things, of course, subsection 54b(3) continues in the manner that it was outlined and that is, "Where the conditions set out in subsection 2 are not met, the employer shall offer the worker the first opportunity to accept suitable employment that may become available."

I assure you that the Toronto board submissions will deal with these things in some more detail, but we consider it an important aspect of amendment to this bill.

Perhaps equally important to that are our concerns with respect to section 54 and the distribution of rehabilitation costs. Interestingly enough, this does not arise as much from the bill as it does from a policy change of the Workers' Compensation Board. On September 9, 1988, the board of directors revised the cost allocation policy so that all rehabilitation costs are included in the employer's cost statement.

This bill raises the intensity, if I can put it that way, of the rehabilitation efforts of the parties in a proper and appropriate manner and we support that, but the impact of the Workers' Compensation Board's change in this area is to include the rehabilitation costs in penalty assessments and experience ratings of employers under the act. The impact of that is that you could have significant penalty assessments triggered by virtue of rehabilitation costs alone. That is no way to encourage employers to assist in rehabilitation efforts. In fact, it is a disincentive and it does not make a great deal of sense.

There are other problems I mention in the brief. One is that it creates an inequity between people in the same rating group, because rehabilitation efforts are excluded for employers with less than 20 employees, so the board, and impacting with this bill, has created a significant inequity.

We would suggest that the act be amended so that rehabilitation expenses are not considered by the board for experience rating purposes or for penalty assessment purposes, because ultimately I think the two things combined are going to defeat what is an essential part of this bill, and that is to ensure that proper rehabilitation efforts are conducted by employers and the board alike.

I have made some comments concerning the changes to the bill announced in the House by the minister. The main aspect that we would like to comment on is, again, the offer of re-employment. He indicated that the act would be amended to offer re-employment in the form of modified work. It is very difficult to understand exactly where he is going from the general statement the minister has made, but we do have some significant problems in this area.

If his intent is that the employer would create jobs that might not otherwise be in existence in order to re-employ disabled workers, we have a significant problem with that. It goes too far. No employer is in a position to afford to employ injured workers in modified work where each and every worker would have a right to return without regard to the needs and capacities of the organization itself.

The existing Ontario Human Rights Code does not go that far. It in fact relates this concept of accommodation back to the essential duties of the job, and Mr. Anand's submissions indicated that to you. It deals with a job that is in existence, not a new job or a different job which can be created.

The chamber is quite concerned by the minister's comments that he may be thinking of creating or providing an absolute right to re-employment. I will tell you, that is not going to do anything for the dignity of workers either, if you are putting them into jobs which are entirely unnecessary to an employer simply to put them back to work. We are going to have to see somewhat how that pans out.

I would like to make a couple of comments concerning Mr. Anand's submissions, because what I have hinted at in a couple of places here is the conflict between this legislation and the Ontario Human Rights Code. There is no question that what Mr. Anand said to you is correct: that with this bill as it is drafted and with the Ontario Human Rights Code as it exists there will be competing jurisdiction and dual jurisdiction over the same issue.

There is also no question as to which bill will have priority, because of, as he outlined to you, I believe it is section 46 of the Ontario Human Rights Code. This is not going to be a sensible solution or a sensible

process, where you are fighting on two fronts at the same time over the same issue. I tend to think that one forum would be better.

The Workers' Compensation Board is used to dealing with injured workers—injured as a result of their jobs. They have a specific expertise in that regard. As Mr. Anand indicated, his jurisdiction is more broadly based than that. He deals with handicap not simply arising out of employment but that impacts on employment. The Workers' Compensation Board would not be involved in that area under Bill 162.

If a person has a bad back, if he comes and applies to an employer for a job there, under the Ontario Human Rights Code the employer has an obligation to attempt to accommodate that back problem if he can adjust the essential duties of the job the individual is applying for. That has nothing to do with an injury at work or a workers' compensation issue, and that jurisdiction is properly with the Ontario Human Rights Commission.

What you are doing here with Bill 162 is carving out an area and becoming more specific in an area—as you actually raised, Mr. Carrothers, I think when you asked your initial question to Mr. Anand—which the Workers' Compensation Board has always had experience and expertise in.

In order that you avoid overlapping jurisdictions, we would recommend that you exclude the jurisdiction of the Ontario Human Rights Commission from handicap matters that relate to injuries on the job; i.e., which relate specifically to matters which would come under the purview of the Workers' Compensation Board. You would avoid the problem and I think place that particular issue where it should be, and that is with the people who have been dealing with it for a lengthy period of time.

I think those are the comments we wish to make. We would be happy to field questions.

Mr. Chairman: Thank you, Mr. Kenny. I was particularly interested in your comments on section 54, the distribution of rehabilitation costs. I was trying to find in the bill a reference that you make to the fact that the rehab costs are—you say the section "allocates rehabilitation costs to the accident fund for schedule 1"—

Mr. Kenny: You will not find it in the bill, because that is now being done as a result of a policy change, and I provided the date of the policy change, of the Workers' Compensation Board. They said they are now going to allocate rehab costs, which will create this penalty problem.

Why we are raising it in the context of this bill is that this bill imposes greater rehabilitation obligations upon employers and the board, and those costs will certainly rise. What I am suggesting is that you amend the bill here to protect against a disincentive in providing those rehabilitation efforts as a result of a policy of the Workers' Compensation Board. I suggest you protect against the board being able to put those rehab costs on penalty assessments and hence discourage employers from participating in that.

Mr. Chairman: In other words, there would be no difference between a high accident rate at a place of work and high rehab costs as a result of a new program laid on by the employer, for example.

Mr. Kenny: Exactly, and I assure you that will not encourage employers to involve themselves heavily in rehab, because it is going to come back to haunt them.

Mr. Chairman: That is very interesting.

1740

Mr. Tatham: Just following up, because that was my question, is it a disincentive or an incentive? I got a ticket the other day for \$40 for parking 15 minutes in front of my apartment and I am not going to do that again. I did not enjoy it in the first place. If in fact you have to pay, do you not pay more attention to make sure the safety provisions are taken care of and the employee works safely?

Mr. Kenny: That is one thing, the safety aspect is one thing, but what I am suggesting to you is exactly what you have put to me. If I have been penalized once, this time for providing a rehabilitation program that has increased the amount of my costs and hence has resulted in a penalty assessment against me, I am not going to be interested in furthering those rehabilitation costs and causing a further penalty. What I am suggesting is that allocation is a disincentive in that circumstance.

I think what you are saying, if I understand you correctly, is that penalty may encourage better work practices and avoid injuries, but the bill in front of the House right now has a \$500,000 fine associated with violations of the Occupational Health and Safety Act and some significant changes that I am sure I will have the pleasure of speaking on at another time. That is the appropriate place to provide incentives for health and safety, not disincentives for rehabilitating workers who have had the misfortune of being injured. We are a couple of steps down the road.

Mr. Tatham: But who is going to pay for it? How do you look after the situation then?

Mr. Kenny: How do we look after the situation?

Mr. Tatham: Yes. The money has to come from someplace. It only comes from the people who manufacture or do the operation and they pass it on to the customer. Somebody has to do it.

Mr. Kenny: If rehabilitation efforts are successful, you can pay for the rehabilitation efforts by the reduced impact on workers' compensation payments, because you are going to have people back at work, not on workers' compensation. That is the whole purpose. That is the concept of the act, to get them off workers' compensation.

Mr. Tatham: Right. Thank you.

Miss Martel: I was interested in your last comment in light of what had been said by Mr. Anand when he was in here. I just wonder if you can go over for me what you said in the final analysis; that is, the WCB has the expertise in terms of these matters. You mentioned something about exclusion from the Ontario Human Rights Code and I am not sure if what you are inferring is that this section, in terms of section 54 in the bill, be excluded from the code. Is that what you are—

Mr. Kenny: No.

Miss Martel: Okay. I wanted to clarify that.

Mr. Kenny: What I am suggesting is that where there are handicapped

issues relating to an injury at work, those matters be dealt with exclusively under the rehabilitation and reinstatement provisions of Bill 162 and not under the Human Rights Code. Am I excluding the code?

Miss Martel: I guess my question is, what do you do in the case then if you are saying that in those matters where the issues are related to WCB and accidents at work, those issues should be dealt with under this particular bill? My concern is that if the provisions of the Human Rights Code are better, are we not then saying to workers, "You have less of a right and you have fewer direct benefits because you will be judged under this section versus the code"?

Mr. Kenny: That is debatable, as to whether they are better or not. I must say I would disagree with Mr. Anand with respect to that. This provides some very specific rights. What are provided under the Ontario Human Rights Code are very general rights, and very general rights vary from circumstance to circumstance. What this bill does is provide a right for every worker to be dealt with in a reinstatement manner in a specific manner. As a lawyer, I would take specific rights over general rights in most circumstances. So I disagree with Mr. Anand when he suggests employees are better off dealing through the code's processes. It is a very lengthy process as well, and this at least has certain time frames and time limits and it gets on with the process.

Miss Martel: I have just one further question on that. What do you do in the case of all those workers who are already excluded under the bill, like those in construction, in establishments of under 20 and all classes of workers in the future who would be covered under the code—

Mr. Kenny: That is a problem, I agree.

Miss Martel: —and all those people for whom the penalty that is laid out may be much more insignificant under here than what the worker would be entitled to under the code?

Mr. Kenny: Actually, I would be surprised at that because that is quite a full obligation, such as pensions, etc. But on your first point, which is a problem, you cannot simply eliminate the rights those people have.

What I am suggesting is that where there is jurisdiction under Bill 162, where the field has been entered, then you should give that jurisdiction to the Workers' Compensation Board, not to both. Where it has not been entered, the general jurisdiction of the Ontario Human Rights Commission will continue to apply. It is a question of simply drafting on that basis, so that where you have defined application of Bill 162, that is where it goes.

Miss Martel: I can see some problems then in terms of having construction workers and others under the code and a whole other category of workers under the bill.

Mr. Kenny: It is not going to be as much of a problem as if you had both under both. That dual jurisdiction is something no employer and no employee is going to be thrilled about.

Mr. Carrothers: I have a couple of points of clarification. You have drawn to our attention section 45a and, I guess, this offset question—Canada pension plan and so on are offset—and you have mentioned that you do not think any insurance or pension that comes through a private plan should be

available to the employee, that it should be offset as well. Do not most private plans contain an offset so that they would offset for the WCB benefit?

Mr. Kenny: Some do, yes.

Mr. Carrothers: The employee would not get a double award.

Mr. Kenny: That may be, in which case that is fine, but if it is not in there, you will not be able to take that into consideration. There is no harm in putting it in. You are right. If every plan says it offsets against the WCB, there is no point in putting it in, but I am not so sure every plan does. That is why we raised that point.

Mr. Carrothers: I just wonder if in the insurance acts there is not something about double payment already, but I am not sure on that. Maybe our researcher could answer that question.

I have another brief question on section 45b, the retirement income.

Mr. Kenny: To help your researcher, you are talking about subrogation rights under insurance acts.

Mr. Carrothers: I thought there was a double payment benefit, but I may actually be thinking of Quebec legislation, in which case it does not really apply here, does it?

You mention on the pension the question of this 10 per cent offset that is put aside and you indicate that perhaps when people have a pension available through their employment, they should get that, and therefore the 10 per cent should not be put aside. I actually do not know the answer, but it has occurred to me that maybe you do. Might that not change the taxable nature of the payment to the employee? Right now, it has the aspects of insurance and it comes back as some kind of insurance payment. Everybody is in it. You sort of have a premium. It is not taxable when the employee receives it. Pension payments are taxable.

Mr. Kenny: Yes.

Mr. Carrothers: If you take a piece of it out because they have pensions and leave the rest, you might not have changed the taxable characteristic of that payment when it comes to the employee. I have a feeling—again, I do not know but maybe the researcher can answer—that the reason this is structured in this way is the taxation problem that might occur to the employee.

Mr. Kenny: Yes, but if he was not injured, his pension would be taxed in any event.

Mr. Carrothers: That is right.

Mr. Kenny: So if what we are trying to do is make him whole, and he is going to receive that pension in an un-reduced form even though he was injured and it would be subject to tax, I do not know, but I suggest we are still in the same situation.

Mr. Carrothers: I do not know whether the fund that accrues from this 10 per cent would—

Mr. Kenny: Be taxable or not.

Mr. Carrothers: But it might need to be nontaxable to make him whole. In other words, if it were taxable, he might end up with less because the amount of money that is there to be paid out is less.

Mr. Kenny: It would depend on the person's pension.

Mr. Carrothers: Maybe we need to look into the question, but it just occurred to me as you went through it that there might be a—

Mr. Kenny: No, it would depend on the person's pension. That is why we sort of suggest some integration between the person's pension and this benefit under the act, so that you would have an offset. If the pension meets this full amount, then you do not contribute. If it meets some of it, you end up getting some money back or whatever. I am thinking a meshing of the two is what we are looking at.

Mr. Carrothers: I have no further questions.

Mr. Chairman: In view of the hour, I think we had best finish this off. Mr. Kearney, Mr. Kenny and Mrs. Rehor, thank you very much for a thought-provoking and interesting brief. We appreciate it.

The steering committee of this committee will meet tomorrow at one o'clock in committee room 1. We will talk about scheduling. We are adjourned until tomorrow afternoon following routine proceedings.

The committee adjourned at 5:50 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

THURSDAY, MARCH 2, 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

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Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Chiarelli, Robert (Ottawa West L) for Mr. Black

Mackenzie, Bob (Hamilton East NDP) for Mr. Wildman

Martel, Shelley (Sudbury East NDP) for Mrs. Grier

Clerk: Mellor, Lynn

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Nurses' Association:

Bell, Lesley, President-Elect

Carr, Cathi, Research Officer

From General Motors of Canada Limited:

Curd, Jr., F. Rick, Vice-President and General Director, Personnel

Rodgers, Barb, Government Relations

Towey, Bob, Manager, Compensation Benefits Policy

From the Canadian Union of Public Employees, Metropolitan Toronto District Council:

LaBelle, David, Vice-President

McDonald, Alexander C., National Association of Broadcast Employees and Technicians

White, Jack, Staff Representative, Regional Office

Phyllis, Richard, President, Local 2

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, March 2, 1989

The committee met at 3:40 p.m. in room 151.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Mr. Chairman: The standing committee on resources development will come to order as we continue our consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Mr. Tatham: Do we proceed without a quorum?

Mr. Chairman: I am nervous about the time.

Before we start hearing representations, could we deal with a couple of procedural matters first, if our guests will be patient for a few more moments? First of all, on Monday, because of the number of people we are expecting here, the committee hearing will be held in the Ontario Room in the Macdonald Block, starting at 10 a.m. We will not be in this room. It is not large enough to hold the people we expect to be in attendance. We are moving across the street to the Ontario Room of the Macdonald Block.

Second, there has been distributed by the clerk the schedule of hearings worked out among the three parties, which takes us through the period when the House is not in session. The committee schedule flows from that schedule worked out among the three party whips. That is why it is the way it is.

Finally, today we have to deal with a motion that was put yesterday by Mr. Dietsch and then postponed while we held a steering committee meeting earlier today. I wonder if Mr. Dietsch would speak to his motion. I hope we will not have a prolonged debate since we had a debate on it yesterday and the steering committee chatted about it earlier today.

Mr. Dietsch: The motion that was presented yesterday dealt with a two-pronged position on behalf of myself in terms of trying to incorporate within the hearings structure an opportunity to hear a number of other presenters to this committee.

For some time now, we have been wrestling with the overall agenda. I point out right at the outset that the committee some time ago agreed to six weeks of public hearings, which was agreed to by all three parties of this committee. I have since worked out a motion to allow for some additional presenters to come before this committee at the direction of the clerk.

The motion I presented yesterday dealt with March 20. I believe everyone has a copy of it. I can read it if you would like me to.

I moved that the committee direct the clerk to reschedule public

hearings on the week of March 20, 1989, to begin at 9 a.m. and every half hour thereafter until 6:30 p.m. Hearings to conclude daily at 7 p.m.

And further, that the subcommittee meet tomorrow, March 2, 1989, at 1 p.m.—this has taken place—to review scheduling public hearings to include Monday, April 3, Tuesday, April 4, Wednesday, April 5, Thursday, April 6, Friday, April 7 and the week of April 10 to 14, inclusive, from 9 a.m. until 7 p.m.

At the subcommittee meeting, you will be aware there was some discussion with respect to the committee meeting during that week of April 3 and inclusively up to Friday of the week of the 14th.

I have talked to our government whip who said he would have no problems if this committee decided to meet. However, I understand the third party has a caucus meeting on the week of April 3 and as well that your party has a caucus meeting at the end of the week of April 14.

I recognize that the House whips have agreed to that schedule. I personally would prefer to see us continue with the important business of this committee to hear as many people as we possibly can. However, I recognize that part of the motion would not be in order, based on the standing orders on agreement by the whips.

I am disappointed by that, quite frankly, but that being the case, I have prepared a subsequent motion I would like to put before this committee. I withdraw the original one I put forward yesterday and I will put this one before the committee. I can give it to the clerk to circulate.

Mr. Chairman: The motion that was before the committee yesterday has been withdrawn. In its place:

Mr. Dietsch moves that the committee direct the clerk to reschedule public hearings on the days Monday, March 20, Tuesday, March 21 and Wednesday, March 22, 1989, beginning each day at 9 a.m. and every half-hour thereafter until 6:30 p.m. Hearings to conclude daily at 7 p.m.

Mr. Dietsch: That follows along with the half-hour scheduling of the day. It includes an earlier start in the day and a later finish in the day, but I personally feel that this committee has very important work and I personally would like to hear as many presenters as possible. With all due respect to those individuals who are waiting to make presentations, I put that in the form of a motion.

Mr. Chairman: There is just one matter that is bothering the chair. If we are going to schedule more groups on March 20, 21 and 22, and certainly your motion is in order, the clerk will need direction as to who is going to be picked from the many people on the waiting list to make appearances before the committee. The clerk has been through a great deal in telling all sorts of people they cannot be heard. At this point, it is not appropriate, I would think, to burden her with that. That should be a collective decision. I urge the committee members, not as we sit here now, to get together very shortly and work out who you wish to hear, because the people who are not selected, I am sure, will let you know about it. Okay?

Mr. Dietsch's motion is in order and it is before the committee.

Miss Martel: I have a couple of comments on the motion now that it

has been revised. I am picking up from his comments that this committee has some very important work to do and that he would like to hear as many presenters as possible. I would like to add an amendment to his motion, given that he is asking the clerk to reschedule hearings as it is.

What I would like to have added, and it follows in line from some of the discussions we have had in this committee already, is:

and further, that the committee direct the clerk to reschedule public hearings so that all groups and individuals still not accommodated will be heard when the House is next not in session; that is, during the summer of 1989.

I think that if we are serious about trying to hear people and if the government members are serious about the important work this committee has to do, then surely they will consider that the very large number of groups that have not been heard and that will not be accommodated even under the changes presented here—the clerk has already advised us that only 18 more groups will be heard under this present schedule.

Given that some 300 groups and organizations still will not be heard even with these revisions, I would think the government members would be willing to look at that amendment as well, given, as I said, that Mr. Dietsch has said that we have some very important work to do and that we would like to hear as many people as possible.

That is the amendment I would like to move to his motion. I will write it out now for the benefit of the clerk.

Mr. Chairman: It would be appropriate to have that in writing, because how you word it will determine whether or not it is in order since a general motion to hear everyone who wanted to be heard was earlier defeated by the committee.

Mr. Dietsch: I think there is a bit of a technical problem with the amendment that is being presented in terms of my motion being in order. I ask the chair for a ruling on the amendment. My view is that it is not in order, based on the fact that the six weeks of hearings have been agreed to and the time has been allotted.

Mr. Mackenzie: Inasmuch as the time had been agreed to and allotted and only 18 more will be accommodated by Mr. Dietsch's motion, but inasmuch as Mr. Dietsch has moved a motion that extends the time to the point of accommodating 18 more people, I do not think there is anything out of order about an amendment to his motion to consider the further groups that have not been accommodated. It is not the original motion we are dealing with; it is his motion.

Mr. Chairman: We still do not have the motion in writing.

Mr. Mackenzie: If I may be allowed one more remark on this while we are dealing with it, it seems to me to be a highly questionable practice to say that we have had, and some have made very strong cases, 250 or 300 groups that are not allowed to appear before this committee, and for this committee then to decide that we can pick 18 of those 250 or 300 people and accommodate them. I would not want to be in that position.

1550

Mr. Chairman: I wonder if, while we are waiting, you wish to proceed with the first presentation and then deal with it.

Mr. Dietsch: I would like to get these things out of the way in the beginning so that we can—

Mr. Chairman: Miss Martel's amendment to be added to Mr. Dietsch's motion, which extends the hearings from 9 a.m. until 6:30 p.m. every day on Monday, Tuesday, Wednesday of the week of March 20, is:

and further, that the committee direct the clerk to reschedule public hearings so that all groups and individuals still not accommodated will be heard when the House is next not in session; that is, during the summer of 1989.

I think that is in order since it talks about the summer session and not the session that we are breaking for now. I think that is appropriate. I would rule it in order and we will deal with the amended motion first, then after that deal with the motion depending on what happens to the amendment. Does anyone wish to speak further to the amendment? Are you ready for the question on that?

Mr. Dietsch: I am sorry. What happens with the amendment is that it leaves it open-ended and therefore the time allotment for the committee to sit has not been granted. What we are dealing with right now is the six weeks that were agreed to by all three parties that we would hold our public hearings within. What the amendment is doing is requesting an open-ended approach to the hearings, and they could go on, quite frankly, in perpetuity until all the numbers have been heard.

I do not accept that as an amendment. If the mover wants to incorporate, "during the six-week period that we have been permitted to sit," I am perfectly willing to accept that kind of amendment, but what we are basically doing with this amendment is extending the hearings past the date for which we have approval.

Mr. Chairman: First of all, while the motion is in order, it would still at some point have to be referred to the three party House leaders and whips for an agreement on scheduling during the summer of 1989. If this motion passed, it would not automatically mean that we would get those weeks that we had requested. I just remind members of that.

Mr. McGuigan: It would create the expectation that was going to happen. All of us know it requires a lot of further agreements. I would not want to put out the expectation that it was going to happen.

Mr. Chairman: No, that is why I issued the caution. All right. Is there any further comment before we vote on the motion?

Mr. Mackenzie: I am not sure what Mr. McGuigan means by expectation. The expectation has been put out by the motion Mr. Dietsch has moved, which in effect is only going to allow 18 more people and we have to make some very tough decisions on who those 18 people are. I think the amendment makes ultimate sense and is something we are going to have to argue for at the House leaders' level.

Mr. Chairman: Are there any other comments on Miss Martel's amendment to the motion?

All those in favour of Miss Martel's amendment?

All those opposed?

Motion negatived.

Mr. Chairman: Are you ready for the vote on the main motion now, which extends the hearings in the week of March 20? Any further debate on that?

Mr. Mackenzie: It might be useful if we had the Liberal members who have opposed hearing all the others make up a list of which 18 they think we should hear, out of the 250 that remain, before we deal with it.

Mr. Dietsch: Mr. Mackenzie knows full well that the people who came before the hearings and who were established before the hearings previously were set up through a process the clerk did. Quite frankly, there was no direction or interference, shall we say. Put it this way: There was no interference by this committee as to who would be heard and who would not be heard.

Mr. Chairman: To be fair, there were directions from the committee that the clerk was to schedule—

Mr. Dietsch: No interference.

Mr. Chairman: —umbrella groups first—

Mr. Dietsch: Right.

Mr. Chairman: —major unions and organizations.

Mr. Dietsch: Was that agreed to by all three parties?

Mr. Chairman: —to try to have a balance between employers and employee groups, so there was some fairly specific direction to the clerk.

Mr. Dietsch: Agreed to by all three parties.

Mr. Chairman: Okay. We are dealing with Mr. Dietsch's motion now.

All those in favour of Mr. Dietsch's motion please indicate.

All those opposed?

Motion agreed to.

Mr. Mackenzie: I want to clearly indicate that the New Democratic Party members voted with this motion to extend it for 18. I also want it clearly on record that the Liberals voted in this motion against hearing the other groups.

Mr. Chairman: Okay. Is the committee now ready for the first presentation? The first presentation is the Ontario Nurses' Association.

Mr. Dietsch: I want to clearly indicate to the record as well that

the six weeks of hearings were agreed to by all three parties in this committee. We are trying to incorporate as many as we possibly can within the confines of that original agreement. Let's not forget that anyone has the opportunity to submit, to put a written response before this committee for its consideration as well.

Mr. Chairman: Mrs. Marland, before we move to the first presentation.

Mrs. Marland: I assume that the committee started about five minutes ago?

Mr. Chairman: Yes.

Mrs. Marland: For the record's sake, I would like to record that I have at this moment arrived at the meeting, five minutes after the meeting started, that I am the only Conservative member here and obviously have not had an opportunity to vote on this new motion. I understand and respect the fact that the motion has been voted on. That has taken place. I notice, looking quickly, that it is a different motion.

Mr. Chairman: You cannot debate that motion now.

Mrs. Marland: No, I am not debating it. Can you just advise me whether the motion that was dealt with by the subcommittee today was tabled yesterday by this committee?

Mr. Chairman: The motion that was put yesterday by Mr. Dietsch was withdrawn and this motion was put earlier this afternoon.

Mrs. Marland: Okay.

Mr. Chairman: And carried.

Mrs. Marland: And it has been carried with a quorum, but without any Conservative members present.

Mr. Chairman: I do not lightly start a committee hearing without all three parties present, but the committee was scheduled to start at 3:30, and with the schedule before us this afternoon, I really felt it was important to get under way.

Mrs. Marland: I respect that. It was just that question period went longer today.

Mr. Chairman: I understand that.

Mrs. Marland: So I can ask questions later in the afternoon as to information on how these days will be conducted, as pertaining to this motion?

Mr. Chairman: Yes.

Okay, we now have the Ontario Nurses' Association before us with a presentation. We welcome you to the committee, and I assume you will introduce yourselves and your colleagues.

ONTARIO NURSES' ASSOCIATION

Ms. Bell: Mr. Chairman, I would like to introduce myself and my colleagues. My name is Lesley Bell. I am the president-elect of the Ontario Nurses' Association and will be the 1990 president of the association. On my right is Noelle Andrews, assistant director of the government relations department. On my left is Cathi Carr, a researcher with the ONA, and Bharrat Latchman, who is manager of research services.

It is a pleasure to have an opportunity to appear before this committee and to highlight parts of our submission on this bill to amend the Workers' Compensation Act. As president-elect of the Ontario Nurses' Association, I speak on behalf of 50,000 staff nurses who are members of our union. As a voice for nurses who work in hospitals, nursing homes, homes for the aged, public health units, the Victorian Order of Nurses, medical clinics and private industry, the ONA brings a unique perspective to the issues addressed in Bill 162.

As a working staff nurse myself, I can tell you that nursing is a very labour-intensive, physically demanding profession. There is a lot of lifting, bending, pushing and pulling associated with bedside nursing, so back injuries are among the most common ones.

Unfortunately, many of our nurses who are injured at work incur permanent disabilities. Often this means that they are unable to return to regular nursing jobs. They can only hope that the Workers' Compensation Board and the employer will agree to a modified work program or, failing that, that the WCB will consent to some form of retraining program. Hopefully, such a retraining program would not disrupt any more than is absolutely necessary the nurse's income level and her ability to use the skills acquired through a lengthy period of education and training at a substantial cost to both the nurse and the taxpayer.

1600

Our union has many serious concerns about the proposed new system for compensating workers who are permanently disabled as a result of workplace injury. We believe the bill, as it now stands, is a retrograde move that will have serious negative impact on the lives of permanently disabled workers. This bill would replace the current system of permanent disability pensions with a system under which projected loss of earnings capacity will form the basis for compensation for the future loss of earnings resulting from the injury. This is along with a very small, separate lump sum award for noneconomic losses.

ONA has been opposed in the past and remains opposed to this kind of dual award system. This is a system that denies injured workers the right to a pension for life for a disability which lasts for life. The wage-loss payment is to be based on an amount that the WCB considers the worker is able to earn after the injury, whether or not the worker is actually in such employment.

It is possible that even if the worker is able to find some kind of post-injury employment, the WCB may deem that she is capable of earning even more. It is our view that this proposal is quite ridiculous. As well, the board would have the discretion to end these wage-loss payments, as it deems appropriate, before the age of 65. This is another example of how the livelihood of injured workers is to be left in the hands of the board. This latitude is not only unfair, but unjust.

Our other major concern centres on the bill's restriction on the access by injured workers to rehabilitation. Bill 162 restricts access to vocational rehabilitation services, such as assessments, training and job search assistance, to those workers who are in receipt of temporary benefits. These benefits are paid to a maximum of 18 months only. This means a person with a severe injury who is unable to participate in a rehabilitation program before the 18 months have elapsed will be denied rehabilitation. An injured worker could be denied rehabilitation because she is no longer receiving temporary benefits or a worker could be unable to complete a rehab program, even though she has already started it, because her temporary benefits have ceased. All of these scenarios are totally unacceptable.

Also, there is still no right to rehabilitation for injured workers. The board still retains sole discretion as to whether an injured worker will be provided with a vocational rehabilitation program. The bill, instead of promoting and providing a right to rehabilitation as contemplated in the Majesky-Minna report, is restricting access to rehabilitation. This union could never support such a move to erode rehabilitation services. These services should be the primary focus and linchpin of the entire workers' compensation system.

The ONA urges the government to abandon Bill 162 in its present form and to enact new legislation enshrining the following basic principles: a lifetime pension for a lifetime disability; recognition that a permanent disability affects the injured worker 24 hours a day and not just during working hours; if unable to return to her former job, the right to be retrained for a job which provides, as closely as possible, the benefits of the pre-accident job; where the injured worker is unable to find a reasonably equivalent job, the right to a continuing pension supplement to make up any shortfall between the income of the new job and the escalated pre-accident income; where the injured worker is unable to find employment, the right to a continuing pension supplement until the employment suitable to the worker is obtained, and, last, the right to efficient, comprehensive and competent rehabilitation services.

The Ontario Nurses' Association urges the government to withdraw this bill and to draft new legislation which will truly create a fair system of workers' compensation.

I would like to thank you for your time and attention. My colleagues and I would be pleased to answer any questions you may have. I have just highlighted our brief; there is more, dealing directly with the sections we have concerns with, in what was handed out to you.

Mr. Chairman: Thank you for your presentation. I am sure there are comments or questions from members.

Mr. Tatham: I have asked this question other times and I will ask it again. Saskatchewan has had this system for a few years. Have you checked with them on their success or failure in this type of dual award system?

Ms. Carr: We have not checked with Saskatchewan, but I understand from reading in Hansard some of the debates that have taken place in the House that Miss Martel has in fact raised that matter. It is also my understanding, through links with the injured worker movement, that some of the same problems that we anticipate with this bill are problematic in Saskatchewan and the other provinces that have this dual award system.

I am speaking specifically about this whole concept of deeming, this

whole concept of not paying actual wage loss for a job which the injured worker may not have or have any possible hope of getting. So I think it actually might be appropriate to have some testimony from injured workers from these provinces to get an accurate sense in terms of the question that was posed.

Mr. Tatham: It would make sense to find out what actually—they have had eight or nine years doing this. I just wonder what their experience is, particularly in the nursing profession.

Ms. Carr: I am afraid I cannot answer that specifically, but I think with a question of that nature, it would probably be better to invite to this committee people from those provinces who have had direct experience with the system in those provinces. But certainly, we have a lot of concerns and a lot of trepidation about what the system can mean for Ontario and for our members—and not just our members, but other injured workers as well.

Mr. Brown: I am most delighted to see the nurses in front of me. I have the pleasure of being married to one of your members, so—

Mr. Dietsch: You're very lucky.

Mr. Brown: Yes, I am. I would like to—

Mr. McGuigan: You're not alone.

Mr. Brown: I am not alone. Good.

What I am interested in is on page 4 of your brief where you talk about the noneconomic loss provision. You use the example of a 35-year-old schoolteacher and you talk about how under this system, as opposed to the old meat chart system, they would lose approximately \$80,000 in benefits from the Workers' Compensation Board. I expect that what you are saying is that the person, though, would be going back to work as a teacher and not losing any income as being a teacher.

Ms. Carr: Possibly so, although depending on the nature of the injury—and although there were no examples in the background or from the nursing profession—even where nurses are able to return to some form of nursing work, what you find is that they are quite restricted in terms of work opportunities. By that I mean that they would be often highly restricted to areas that were considered somewhat lighter, perhaps modified, like intravenous teams, working in nurseries and so on and so forth.

Just to use the nursing example, what you would have would be a real restriction in terms of promotional opportunities and transfer opportunities and, despite the Human Rights Code, I would also say the opportunity to change jobs and to go work for another employer in the hospital industry, because nurses trying to get work with employers other than the accident employer are still being confronted with questions. The application forms still ask: "Have you ever been in receipt of WCB benefits? Have you ever, etc.?"

In actual fact, although people may be going back to work and possibly earning the same income, although I think that is questionable because of the restrictions in terms of opportunity, we still have to recognize some of the limitations that are placed on these people when they get back to work and that we have not recognized in the past, at least not ostensibly: the pain and suffering and the limitation on the other parts of their lives outside of the workday.

In actual fact, there is a considerable loss to this teacher in this example, as the capitalized value of—

Mr. Brown: There is a loss if he or she went back to work and made the same amount of money. On the other hand, if he or she could not go back to work—that is the problem with the old meat chart. It did not take into consideration the fact that individuals may not be able to go back to work. Under this scenario, if they could not go back and find any gainful employment whatever, the employer could not reinstate them because they could not do the work; there was no other job available.

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I would suggest to you that the capitalized cost of that would be somewhere around \$800,000. If they did not go back to work, the net difference would be close to \$700,000. I guess what I am saying is that the two awards have to be looked at together. That is the way the system is meant to work.

Ms. Carr: I think you have to compare systems, the entirety of each system with the other. I do not think this bill makes any better provision for people who are unable to return to work. All this bill is saying, for people who are unable to return to work at all, is the equivalent, to supplement what a person would get on old age security, and that is not very much for a young person.

Mr. Brown: No, the bill says specifically that they get wage loss. They get 90 per cent of their income.

Ms. Carr: No, not at all.

Miss Martel: No guarantee.

Mr. Mackenzie: No guarantee.

Mr. Brown: Yes.

Ms. Carr: What the bill is talking about actually is to—

Mr. Brown: After six years it is.

Ms. Carr: At the point of determination they are going to look at a number of factors. The board in fact has the discretion to say, "We feel there is a job out there in the community that you could do." So in fact there may not be any wage loss whatsoever to a person who is unemployed.

Mr. Brown: So the issue is deeming.

Ms. Carr: The issue is deeming, and I think you have to look at both systems: What is guaranteed? Unfortunately, it sounds as if we are praising this current system, but we have always talked about improving this current system. It is not perfect, but compared to Bill 162, unfortunately, I think a lot of people are in the position of sort of defending the present system.

But in terms of guarantee, I think you have to look at what is guaranteed in the current legislation and what is guaranteed in Bill 162, and there is not much guaranteed in Bill 162 for the injured worker.

Mrs. Stoner: One of the emphases of this bill is in the area of

vocational rehabilitation. The whole idea is to ensure that more people have that and that they have the opportunity then to return to the workforce. Do you see this bill and its provisions as being an improvement over the existing situation?

Ms. Carr: The existing situation is not good. We have had a number of problems with vocational rehabilitation, and a number of those we tabled before the Ontario Task Force on the Vocational Rehabilitation Services of the Workers' Compensation Board at the end of 1987, but I do not see anything in this bill that makes any real improvements.

There is an obligation on the board to contact the injured worker 45 days after notice is given of the accident, and then there is an obligation to offer a vocational rehab assessment at the six-month period. But in terms of any actual real improvements, I just do not think they are there.

You have a shortened period of access to the benefits; a shortened period of assistance with job search; many more limitations on the system of rehabilitation. What Majesky-Minna recommended in their report, An Injury to One is an Injury to All, is basically a right to rehabilitation, and we highly supported the recommendations from that task force.

From our perspective with nurses, we find it is very difficult when they sustain a permanent injury and cannot go back to regular work. Employers are very loath to take nurses back unless they are 100 per cent fit. So rehabilitation is a very important issue with us, and we feel in fact that the government's focus should have been on improving actual rehab: lessening the case load for vocational rehab workers and improving the qualifications; and basically putting the emphasis there. I think doing that would have saved the government and the board dollars in the long run, rather than restricting access and cutting back on benefits that workers will receive under permanent disability pensions.

But you are absolutely right. Rehab is extremely important, and I would think from our perspective, probably the most important issue at the Workers' Compensation Board at the moment for our membership.

Mrs. Stoner: I appreciate your perspectives on it, what you think are the improvements needed in the area and the emphasis on the time to work with individuals, to make sure they are getting what they need. I think that is what we are trying to do.

Ms. Carr: I think it is important. The one thing the current system has now is that you can access it. You can request that benefits or services be provided when that injured worker is ready to benefit from rehab, but at the moment the time frames are so rigid that at a point in time when the injured worker perhaps could benefit from rehab, the time has elapsed and he is no longer even eligible to be considered.

There are a lot of problems that I think really need to be looked at.

Mrs. Stoner: I appreciate your perspective, particularly coming from the health perspective, about what it is costing. Thank you for coming.

Miss Martel: I would just like to go back to the dual award system for a moment, if I may, and particularly the future loss-of-earnings benefit where you seem to have some problem in terms of deeming. I have said all along that the payment is not guaranteed, and I would just like to ask you again what your reading of the bill is in terms of that particular payment.

Ms. Carr: I have read the backgrounder that the ministry put out, the little pamphlet and the letters to the editor that the minister has written, in terms of what is or is not guaranteed. But when I come back and actually read the act, the act does not make any guarantees whatsoever. It is basically talking about what the injured worker is able to earn in suitable and available employment. It is not talking about any real wage loss.

All the examples in the backgrounder are about real situations of actual wage loss—job A, job B and so on—but there are many people who do not fit into these nice cookie-cutter moulds. The way I read this section of the act, I certainly do not see any guarantee of future loss-of-earnings benefit in any way, shape or form.

Miss Martel: If you can just stay in the same section, a little bit farther down—if you have the bill in front of you—there was some debate here last week, when the board was here, that if you indeed did get a future loss-of-earnings award, after five years—you get a review at two years and a review at five—that was etched in stone, and you had that until age 65. I would like to know what your reading of that is, because I certainly said at that point that nothing was guaranteed, that the board could review at any point in time.

Ms. Carr: We make a point of this, actually, in our longer brief. As I look at subsection 45a(2), it talks about, "for such period, up to the time that the worker reaches 65 years of age, as the board considers appropriate in the circumstances." I do not read that as, "The board shall pay until age 65 the following benefit." That is not how we read it at all.

Essentially, our major focus is on the collective bargaining end, so obviously we are very attuned to looking at contract language. I think if this were a collective agreement, we would want a lot more certainty before we signed on the dotted line.

Mr. Mackenzie: I want to ask two general questions. I take it that the brief you have put together and the position you have taken, raising your concerns about Bill 162, is something your organization has done itself?

Ms. Carr: Yes, that is right.

Mr. Mackenzie: This has not been dictated to you by anybody else. It is as a result of your own research.

Ms. Carr: Yes. We do maintain links and liaison with the injured worker community. Part of my role in the Ontario Nurses' Association actually is occupational health and safety; the other portion is workers' compensation. I am the only person in our organization doing that at the moment. I certainly consider the opinions of the injured worker movement and of the rest of the labour movement valuable, but there is no question that these are the opinions we hold with respect to our own members and the concerns we see with respect to our own member nurses in ONA.

Mr. Mackenzie: Once again, asking the question of your organization generally, the Minister of Labour (Mr. Sorbara), on February 28, just a couple of days ago, speaking to the Corpus conference, gave three reasons why he thinks people are opposing Bill 162. His third reason, in two short paragraphs, is:

"Third, some people are angry—or at least are showing anger—for

reasons that have nothing to do with whether the new system is better than the current one. Some think that the only solution to problems with workers' compensation in this province lies in vast increases in spending. They are misfortune-tellers and that's all they see in their crystal ball. These people can be expected to remain angry and try to use their anger against this bill as long as the government remains firm in its commitment to implement reforms without increasing costs unnecessarily."

Your group would not fit into that category, would it?

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Ms. Carr: Unfortunately, workers' compensation is an issue that can certainly generate a lot of anger in a lot of different areas; not just on this bill but on other policy and procedural questions that have come up. We have raised a number of issues over time prior to Bill 162. Bill 162 is just another sort of dictum in a long line of other things that have come down the pike, such as the subsection 45(5) supplement change we have been concerned about.

Anger perhaps may be justified but I think that at the same time what we are trying to bring up today are some rational viewpoints and to point out to the committee that we have a number of serious problems among our own membership with workers' compensation. It is not a question of wanting the government to throw good money after bad but to actually look at ways we can really improve the system and get people back to work and get them proper vocational rehabilitation and so on.

Mr. Mackenzie: I should point out that he says some people are angry at the system as it now exists, and I accept that. The difficulty I have is with imputing motives, saying that some people are going to oppose this regardless and show artificial anger and be misfortune-tellers. I just thought it was a little unfortunate.

Ms. Carr: I do not think it is really misplaced anger. I think there is anger with certain aspects of the current system, but I think there is anger that is related to Bill 162 that rests solely with Bill 162 itself.

Mr. Tatham: Just to recap, what would you suggest? If you had a magic wand and could do what you wanted to do, what would you do to make this bill work properly?

Ms. Carr: We feel the bill should be redrafted.

Mr. Tatham: But what are the main elements?

Ms. Carr: You have to do a lot of work on rehabilitation. I think the wrong road has been taken with rehabilitation with this bill so far. There has been an introduction in this bill of some interesting and positive concepts, like the concept of reinstatement and the concept of recognizing the fact that an injury does last beyond the work day. Those are positive concepts, but I think they need to be reworked.

I have had a lot of recent experience in terms of consensus building between labour and management on the occupational health and safety side. I think there needs to be a lot more input from the actual people who are going to be living with this legislation and experiencing the effects of it. Perhaps at the end of these hearings you will have some valuable information to start again, which is what we would like to see happen: start again.

Mr. Chairman: The final question, Mr. Dietsch.

Mr. Dietsch: You were touching on some of the issues you felt were positive contributions to improving a system we know is broken and would certainly like to be in a position to do something constructive about. I think that is what this committee is all about.

Do you feel the dual award system is a positive contribution? I am sure you are aware that the dual award system has been studied over many years—

Ms. Carr: Yes, for a long time.

Mr. Dietsch: —and has been supported by many reports. I would like to have your organization's opinion on that.

Ms. Carr: I am not sure it is really beneficial to look at the concept or the philosophy of the dual award system in isolation of this bill, because that is essentially what is before us is as it is constituted in Bill 162. We have certainly examined the Weiler reports over the years and the replies to the Weiler report and the various submissions and so forth. But I think all we, as an interested party, can look at is what is brought forward as a realistic document or as a realistic potential piece of legislation. We have not seen a concrete plan we have liked so far that is based on this philosophy. Let's put it that way.

Mr. Dietsch: I can assure you that from the committee's viewpoint, at least my particular personal viewpoint, I appreciate your comments and that you have gone to the extent of putting them together. I appreciate the opportunity you have taken to come in and make comment on Bill 162.

Ms. Carr: We are glad to be able to do it.

Mr. Chairman: Ms. Bell, Ms. Carr and your colleagues, thank you very much for making the presentation to the committee.

Ms. Carr: Thank you very much.

Mr. Chairman: The next presentation is from General Motors. They have given us a two-part brief. If those people could come to the table, we would appreciate it.

Make yourselves comfortable. Whenever you are ready to introduce yourselves and proceed, would you, please.

GENERAL MOTORS OF CANADA LTD.

Mr. Curd: Good afternoon. My name is Rick Curd and I am the vice-president of personnel for General Motors of Canada. With me are Barb Rodgers and Bob Towey, members of the staff of General Motors of Canada.

I would like to begin by reading to you my remarks, and then we will be happy to enter into any discussion you would like to have with us.

I welcome the opportunity to appear before this committee on behalf of GM of Canada to review the recent amendments to the Workers' Compensation Act. The Bill 162 revisions will have a significant and far-reaching impact on the direction of workers' compensation in Ontario.

GM of Canada's approach to health and safety has its foundation in a commitment to providing the safest work environment possible. A co-operative, joint labour-management approach to accident prevention and worker rehabilitation has enabled GM of Canada to develop innovative approaches to providing fair and equitable treatment of injured workers.

Our first priority is the prevention of work-related injury through a comprehensive safety program and extensive safety training. We recognize that the prevention of industrial injury is most effectively influenced by the knowledge and awareness of safety by employees themselves.

In fact, GM and the Canadian Auto Workers established joint health and safety committees in each of our plant locations in 1973. Identifying and resolving safety concerns is the full-time responsibility of these committees.

We support the concept of balanced employer-employee interests embodied in the Workers' Compensation Act. We believe strongly that injured workers legitimately entitled to workers' compensation benefits must be fairly compensated. We support Bill 162's focus on early rehabilitation and the early return of a rehabilitated worker to work.

We remain concerned, however, with the escalating annual workers' compensation assessments and the growing unfunded liability under the current system. We do not feel that Bill 162 adequately addresses these concerns or recognizes the cost implications for employers who are required to establish a more equitable system.

GM of Canada believes that individual employers must be accountable for their respective accident rates and workers' compensation costs. More to the point, workers' compensation benefit assessments must reflect the experience of each organization in order that employers are further encouraged to continually improve their health and safety records.

We support the two primary objectives of the workers' compensation reforms in restoring the financial position of the injured worker as close as possible to his pre-injury earnings and focusing on rehabilitation and the return to work.

Despite this, we cannot support the proposed increase in the benefit ceiling to 175 per cent of the average industrial wage at a time of continued general assessment increases. An increase of the magnitude proposed could impose a significant financial burden on GM as well as on many other Ontario employers. For example, in our analysis, by increasing assessments and the proposed increase in the benefit ceiling, GM of Canada's assessments will increase by \$52 million between 1989 and 1992. The Ministry of Labour should not proceed with this provision until it fully understands the impact of the proposed increase in the benefit ceiling and a complete review is conducted of the rate group structure.

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GM of Canada commends the initiative of the Ministry of Labour to move away from the current system of lifetime disability pensions by adopting the economic- and noneconomic-loss system. The proposed earnings system will correct those instances where a worker can inequitably continue to receive permanent disability pensions while earning 100 per cent of his pre-injury wages. It will also ensure that the objective of providing disabled workers with adequate income replacement is met. However, providing for future loss of

earnings is too broadly worded if the intent is to compensate the injured worker for ongoing quantifiable losses.

In addition, the injured worker's co-operation and willingness to participate in the rehabilitation programs and proceeds from employer-funded insurance and disability benefits should be factored in as part of the criteria to be used in determining the wage-loss replacement.

The proposed wage-loss replacement review process represents a positive step towards monitoring workers' compensation recipients. Earnings potential will be more accurately matched with the level of disability. The ongoing review will ensure that significant changes in an employee's condition are addressed. This will enable the Workers' Compensation Board to provide a more responsive service aimed at addressing the priorities of both the injured worker and the employer.

We are concerned that numerous reviews will lead to a lengthy determination of the individual's compensation. There should be some finality in the determination. We believe the review process should be the final step in determining the earnings loss award and should not be open to further appeal.

In the event that the employee can request a review if his condition significantly deteriorates, we are concerned that the employer may be held responsible for any unanticipated deterioration, whether work-related or not. It must be clear that deterioration be causally connected to the workplace injury. The time period in which unanticipated deterioration can be reviewed must be limited. It is difficult, if not impossible, to assess the relationship of the deterioration to the original injury up to six or more years after the injury occurred, as the proposed legislation would permit. In addition, the employer should be allowed to initiate a review if the injured worker's condition significantly improves.

With respect to workers' compensation pension benefits, Bill 162 must take into account other pensions received by the injured worker, whether they be public- or employer-funded plans. Safeguards must be established to ensure that no employee gains a pension benefit, by virtue of an injury, which is over and above what a regular non-injured working person is able to earn.

At General Motors of Canada, employees collecting workers' compensation benefits also continue to accrue pension credits as if they were working on the job. Therefore, an injured worker should not be entitled to receive a workers' compensation pension in addition to receiving full pension benefits from an organization such as GM.

The requirement for employers to fund an additional 10 per cent of the wage-loss replacement to provide for a retirement pension should be amended to exempt employers who continue to provide accrued pension benefits to employees during the period of injury. This inequity would clearly not be in the best interest of GM Canada and the other non-injured GM employees.

We support Bill 162's focus on rehabilitation. It will provide the necessary incentive for employers, employees and the Workers' Compensation Board to take the initiative in this vital area. It is imperative that the rehabilitation process begin simultaneously with the treatment of the injury. Medical studies have clearly demonstrated that the longer injured workers remain away from work, the less likely they will return. A concerted effort must be made to return the injured worker to the workplace at the earliest

opportunity. The goal must be full-time employment in a full-duty job within the employee's capabilities, taking into account negotiated seniority provisions. To accomplish this, a vocational rehabilitation assessment should be performed within the first 30-day period of absence from work and not six months as proposed.

In addition, the injured worker must be required to participate in the rehabilitation assessment. An individual's willingness to participate in the rehabilitation process must be a significant factor in determining his entitlement to an earnings-loss benefit. To further enhance the rehabilitation, results of the assessment must be made available to both the injured worker and the employer.

The Workers' Compensation Board's focus must be on the delivery of timely service to the employer and the employee, rather than administration. We are concerned with the workers' compensation system's ability to deliver the services necessary to ensure early and appropriate rehabilitation. Local facilities frequently cannot provide the timely treatment required, as waiting periods for various medical specialists can range from two weeks to nine months. An increased emphasis on regionalized rehabilitation facilities and community-based clinics is necessary to alleviate this problem.

The General Motors of Canada-Canadian Auto Workers collective agreement permits the placement of an injured worker in a suitable assignment anywhere in the bargaining unit as long as a more senior employee is not displaced. This provision is designed to address specific workplace circumstances at GM of Canada and was agreed upon by the parties. Effective reinstatement agreements such as this should not be superseded by the act. The reinstatement provisions of Bill 162 should be modified to recognize effective reinstatement agreements reached through the bargaining process.

No provisions have been made to recognize reinstatement problems in situations where the employer does not have similar work to that performed by the worker at the time of injury. In addition, an employer must not be held accountable for all of the disabled worker's future employment difficulties. Labour market changes may intervene and situations involving layoffs and plant closings should be taken into consideration when a more senior employee is laid off. The provisions restricting the termination of employment must also recognize possible termination when they result from factors other than injury. Specific inclusions must be provided in situations of just dismissals, downsizings and layoffs.

The cost to employers and impact of Bill 162 cannot be viewed in isolation from initiatives restricting overtime, amendments to the Occupational Health and Safety Act, pension reform, the workplace hazardous materials information system and environmental regulations, just to name a few. The government needs to establish legislative priorities and make decisions on where it and business must focus finite resources to achieve their total objectives.

We are confident that subject to the points outlined here today and the more detailed analysis provided in our submission, Bill 162 will represent an important step in changing the focus of workers' compensation in Ontario. In general, we support the focus of Bill 162. We hope you will seriously consider the concerns we have highlighted today and amend Bill 162 to ensure equity in achieving the goal we share of developing an effective workers' compensation system.

Mr. Chairman: Thank you, Mr. Curd. Does the second document simply expand on your distilled remarks?

Mr. Curd: Yes, it is similar in tone and covers essentially the same points, but with more detail.

Mr. Chairman: Just as a matter of interest, and this does not really deal with Bill 162, has the nature of workplace injuries changed substantially at General Motors in view of the very high-technology world you now operate in?

Mr. Curd: No. I would say that the high-tech world is really just beginning to come on stream and we will see the impact of that, if there is an impact, as time goes on. The biggest impact has been the joint efforts of the union and the company working together, not only to look at situations where hazards exist but also doing ergonomic studies, looking at the way work is done and those kinds of things.

Mrs. Marland: Mr. Curd, is General Motors a member of the Motor Vehicle Manufacturers' Association?

Mr. Curd: Yes.

Mrs. Marland: I think, Ms. Rodgers, you were here with that group.

Ms. Rodgers: Right.

Mrs. Marland: Was there some aspect that the MVMA did not cover or are all the individual manufacturers going to come themselves?

Ms. Rodgers: I believe we are the only ones, over and above the MVMA, that will be appearing. We felt strongly enough about the subject that we wanted to make General Motors's position heard as well. There are some minor differences between our position and the MVMA's position; for example, in the reinstatement provisions.

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Mrs. Marland: I am not questioning your being here. I am only looking to what we can expect from the other automobile manufacturers, and that was the purpose of my question.

Looking at the concern that, obviously, General Motors has for its employees in terms of the risk of injury and the necessary compensation afterwards to its workers, can you tell me whether General Motors has done any study where, in order to avoid the necessity for any reference to Bill 162, the company may have studied offshore manufacturing systems so that workers' risk of injury is reduced. You mentioned ergonomics a moment ago, Mr. Curd. Have you gone offshore to compare how your company operates in the manufacture of motor vehicles?

Mr. Curd: Sure. We have looked at manufacturing systems all over the world, not with health and safety specifically in mind in every instance, although it is a consideration. Are you suggesting—

Mrs. Marland: My question deals only with health and safety. I realize that in a competitive market you would be looking all the time at all other manufacturers of motor vehicles. But because of the expense to which you have referred, that health and safety can be a burden to a manufacturer—that

is only a financial burden; it is a staffing burden as well, especially for an on-line manufacturing system, to have workers absent—and with the tremendous cost personally to those injured workers who are your employees, I just wondered whether you had studied health and safety in other manufacturing locations.

Mr. Curd: Absolutely. When we put in new equipment, such as we have just done in the whole Autoplex renovation, health and safety is part of the study and the plans, along with how it builds the cars. It comes in at the very beginning at the design portion, and I have to say, just like the processes we design for cars, we do not do 100 per cent the first time around, but we do try to go back and make them as safe as we possibly can.

Mr. Tatham: I have a very brief question. On page 3, I see you say, "We cannot support the proposed increase in the benefit ceiling to 175 per cent of the average industrial wage." What are your average wages?

Mr. Curd: Net? Gross?

Mr. Tatham: Whatever.

Mr. Curd: The workers in the plant are in the \$17-an-hour range; \$17 to \$18 with a cost-of-living allowance.

Mr. Tatham: In following that, I just wonder, would that not be up pretty well above the average?

Mr. Dietsch: Inclusive of benefits?

Mr. Curd: No, that is wages only.

Mr. Tatham: Would it be another 20 per cent on top of that?

Mr. Curd: Yes. For the cost of labour, in negotiations in 1987 we were talking in the \$25 range as a total cost.

Mr. Tatham: I just wondered about this objection. The 175 per cent would be more than that; is that it?

Mr. Curd: The flag with regard to the cost is that we think you have an excellent foundation here and you really hit it in the right direction, but you need to do perhaps a little more analysis to come up with some hard data, if you can, on where this is going to come down.

Mr. Tatham: I did not quite understand the answer—an excellent foundation with Bill 162?

Mr. Curd: Yes.

Mr. McGuigan: You make this statement about deterioration, "For example, it is difficult if not impossible to assess the relationship of the deterioration to the original injury up to six or more years after the injury occurred, as the proposed legislation would permit."

I am not a doctor or a lawyer but I think we know, in cases of soft-tissue injuries, that those are the sites that later on arthritis often zeros in on; that area that has been injured. I suffered an injury to my back long ago, so I have some authority for talking about that. It may be

impossible to say absolutely that the two are connected, that the arthritis came from the injury, but all the balance of probabilities, it seems to me, would indicate to any reasonable person that the two were related. You seem to absolutely reject that.

My question is, do you not think there is some possibility that there is a connection between those types of things?

Mr. Curd: Yes, sir. We absolutely agree that there will be instances where deterioration is related to the original injury. We are not arguing that at all. We are saying there are, however, and in our experience there have been, situations where people have said a particular injury deteriorated of its own accord and we found out that was not the case. We just think it should not be absolutely one way, that the option should be there for us to look into that. That is not meant to get away from the responsibility for deterioration that is in fact cause-related.

Mr. McGuigan: I think it is a reasonable answer. On the other question of a person having rights to come back that might be affected by a layoff or changes in the manufacturing processes and so on, I can understand why you would not want to have that obligation, but on the other hand it seems to me that for the person who has been injured, his flexibility of employment and opportunities of finding other work is considerably reduced by the fact of his injury. Perhaps as a matter of fairness you should consider softening your position somewhat in that regard.

Mr. Curd: That is a tough situation to look at. The general premise we were taking was that as long as someone was being disadvantaged because of a work-related injury, then the full recourse should be there. On the other hand, if other conditions came into play and they would have otherwise been laid off, for example, then you ought to look at what they would have been eligible for in the layoff situation. I can understand your point as well.

Mr. Towey: I might give you an example. We have a plant on layoff. A person was injured in that plant and he is okay to return to work. The plant is not working. However, we have another facility in the same place where he conceivably could go. What would happen is he would be cleared to return to work and placed on layoff and would receive a layoff benefit from us, the same as the other people he was working with prior to the injury. What the legislation would force us to do is find him a job even though we have no jobs there.

Mr. McGuigan: I still think you have to take into some consideration the fact that person's flexibility has probably been reduced compared to the person who is not injured.

Mr. Towey: But again, the way the legislation is worded, to follow the example I was using through, six months later we would recall everybody to work. He would be recalled to work because he has been cleared to return to work, so he would be recalled to return to work as the plant came back. The legislation, in the way it is written, would force us to find him a job when everybody else is out of work. Then when our plant came back up, he would go back into the mainstream. There has to be some flexibility in terms of doing that sort of thing operation.

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Mr. McGuigan: I think you have explained that. What about the person—maybe this never happens; I am not an auto worker and I do not know—whose job is dead-ended; it is eliminated and there is nothing to come back to? How do you presently handle those people?

Mr. Curd: We have been successful, in recent years at least. As our technology improves our operating efficiency, we have been blessed with either more work or being able to handle the effects of efficiency through attrition. It has taken some managing to do that. We have done it and we have had a lot of discussions with the CAW about that. That is the way we have been handling it. If we get hit with a serious market change, a downturn in the market, that will put a different picture on it.

Mr. Mackenzie: I have two or three questions. One is about the argument you make in your presentation that in a number of areas you do not want to see the costs increase and also that you would be hit with a huge increase in assessment; it would cost you \$52 million. One of the arguments the minister has made consistently in dealing with this bill is that it is revenue neutral. Do you have any difficulty with that comment? I wonder just how it squares with the increased costs you are going to suffer as a result of this bill.

Mr. Curd: I have the burden, perhaps, of having been in the labour relations business for a long time. As we negotiate, the other side often wants to see very specific backup for a position we take. All we are suggesting is that some more work needs to be done to really establish the revenue neutrality of this legislation. Our statement about the increase is based on the legislation and it really does not say what would happen if we did not have the legislation. So we would welcome the opportunity to help, to be involved in really looking at seeing whether it is neutral.

Mr. Mackenzie: At least there is a question in your mind or something still to be clarified in terms of the revenue neutrality.

Mr. Curd: Yes.

Mr. Mackenzie: That leads into another question I have. I know GM has a good relationship, a pretty solid one, with the CAW in terms of health and safety and other plant problems. Do you find any difficulty with the fact that you are more or less supporting this legislation and the CAW yesterday came down—I was not here, unfortunately—very toughly against it in almost every respect? Is it right or are you right?

Mr. Curd: I really do not have their position in detail in front of me. I find it is always safer to comment on their position directly to them rather than in a separate forum.

Mr. Mackenzie: I thought that might be the answer.

One other thing: In the brief you did not read to us, on the second to last page there is a section that says, "The Workers' Compensation Act should complement and not conflict with, or duplicate other acts, specifically the Human Rights Code."

Once again, I was not able to be here yesterday, but Raj Anand and the human rights people came down with what was, at its mildest, a pretty definite

condemnation of some parts of this bill and certainly said that it was in conflict with provisions in the Ontario Human Rights Code. As a matter of fact, there was a very strong statement to that effect. Does that have any influence on your decision and how do you rate that with your comment that it should not conflict with any other bills?

Mr. Curd: I do not know what specific elements they were finding fault with. Any time we comment on legislation, we ask for and hope that the people crafting it will look at the total package that is in front of us, all the things that we are trying to put together, and that it does come together in a co-ordinated way.

I would comment positively on this, and with regard to the human rights position, I guess I would have to see that, and specifically the points they are talking about, to be able to comment. We have addressed the points here as we see them.

Miss Martel: Just one question on page 5 of your brief: I would like to go back to a question Mr. McGuigan raised in terms of unanticipated deterioration. In your response to him, correct me if I am wrong, you said that what you were asking for was an ability to review, to determine if the continuing problem was related to the original injury.

My reading of that section is quite different. It seems to me that when you say the time period in which unanticipated deterioration can be reviewed must be limited, it is fairly specific. You said it in terms of either the number of times you come back or the number of years. I am just wondering if you can elaborate on what you actually mean.

Mr. Curd: Could you point me to a particular phrase or sentence?

Miss Martel: The second paragraph, page 5, midway through, beginning, "The time period in which unanticipated deterioration can be reviewed must be limited."

Mr. Curd: You are right. In looking at a particular injury, there is a reasonable anticipated sequence of events that might happen. What we are saying is that the unanticipated time period should be limited, that after five or six years, being able to sort out what is above and beyond what was expected is very difficult.

Miss Martel: So you are saying that added to the time limit that the bill puts on, that is, an injured worker can only ask twice for an assessment, that each assessment also be limited; that when you are hurt five years later, that is it and you do not go back any more?

Mr. Curd: Right.

Miss Martel: What do you do in the case of a young worker, for example, who is hurt at 25 and returns to work, but during the course of his employment, he is hurt a number of other times to the same area? What do you do in the case of that worker who is already limited to only going at it twice?

Mr. Curd: I had not thought of that. Would we not look at that as a different injury and would the board not look at that as a different injury?

Miss Martel: No, not necessarily.

Mr. Curd: That is a good point. We did not specifically think of that situation, as you pose it.

Mrs. Marland: Is General Motors of Canada Ltd. the largest employer in automobile manufacturing in Ontario?

Mr. Curd: Yes.

Mrs. Marland: I am not talking about the related products, just as the employer of—

Mr. Curd: As between Ford, Chrysler, GM and the other manufacturers, yes, we are.

Mrs. Marland: Only in Ontario?

Mr. Curd: In Ontario.

Ms. Rodgers: If I could just add something to that, on the first page of our full brief, showing that we sustain an employment base of 44,000 workers, approximately 39,000 of those would be located in Ontario. The bulk of our employment base is in the Ontario area.

Mrs. Marland: It is an impressive brief that you brought to the committee today. I thought there must be significance in the fact that you were here, of all the companies that had already been under the other organization, the Motor Vehicle Manufacturers' Association. Are you 20 per cent or 30 per cent larger in employee jobs than the other manufacturers individually?

1700

Mr. Curd: We are at least twice as big as the next biggest. Is that fair?

Ms. Rodgers: Yes.

Mr. Curd: I am trying to remember from memory the number of people Ford and Chrysler have. I know that in Ontario we are probably three times as big as Chrysler in terms of the number of employees, and I think we have twice as many as Ford. If not, it is very close to that.

Mrs. Marland: That certainly clarifies your interest in Bill 162.

Mr. Chairman: Mr. Curd, thank you and your colleagues for your presentation.

Mr. Curd: Thank you for the opportunity.

Mr. Chairman: The next presentation is from the Canadian Union of Public Employees, Metropolitan Toronto District Council. I think David LaBelle is here, perhaps with others. Gentlemen, welcome to the committee. Mr. LaBelle, would you proceed and introduce your colleagues when you are ready?

CANADIAN UNION OF PUBLIC EMPLOYEES
METROPOLITAN TORONTO DISTRICT COUNCIL

Mr. LaBelle: My name is David LaBelle and I am vice-president of the Metropolitan Toronto District Council of CUPE. I am here with three union brothers: Brother Jack White, who is from the CUPE Ontario divisional office and who looks after workers' compensation claims, Brother McDonald and Brother Phyllis. Brother McDonald is going to address the committee. Then when he is finished, I am going to offer a final few words, and that will constitute our presentation.

Mr. McDonald: My name is Alexander McDonald. Those who know me call me Sandy. Twice in the past 10 years, while at work, I have virtually broken my back. This might beg the question, what is a broken back? A common definition might be damage to the spinal cord. The specialist who examined me 11 years ago, in February 1978, said that I had come within millimetres of doing just that.

While trying to instal a theatrical spotlight instrument for an industrial show without assistance, I slipped on some ice. Not enough to actually cause me to fall—that would have been far simpler. As a staging engineer, my immediate response was to try to save the lamp. I repeat, it was the day of the show, and so that might not be an unnatural response. It is common knowledge the show must go on. This instrument, by the way, and its requisite brace weighed more than 100 pounds.

I had just finished almost two hours of heated discussion and argument with my employer's vice-president respecting worker safety and that management's attitude. They had assigned a teenaged apprentice from within my group to make the installation by himself. After two hours of heated discussion, the man turned on me saying, "Sandy, if you feel that strongly about this, you go and do it."

I agreed readily and asked the apprentice to assist me. The vice-president stopped me immediately and repeated, "You go do it," by implication meaning on my own. His threat was implicit that, should I not agree, I would be fired immediately and summarily and would have to take them to court in order to collect several thousands of dollars owing to me at the time. I reluctantly agreed to do the work alone and under duress.

I had been doing heavy physical work for many years as a component of my jobs, as audio engineer and staging crew chief, in a multiplicity of the media industries. I was in fine physical shape and felt that, at least working under these circumstances, I therefore would be safer than the apprentice. Not so. Slipping on the ice was my first step down a long road to today.

I was examined the next day at Etobicoke General Hospital where the examining physician said: "You could go either way. You're right on the wire." His meaning was all too clear: I might become a paraplegic, I might lose my legs. He insisted that I must give myself a minimum of two months of absolute bed rest. In the finality though, more than nine months' bed rest was required and 15 months thereafter of daily physiotherapy, both from professionals and at home, before I was even able to walk comfortably.

From an economic point of view, this injury has been most disastrous in my case. I am in receipt of a monthly stipend of \$140 plus from the Workers' Compensation Board. This figure initiates from incorrect information supplied

to the WCB by my employer. My agreement with my employer respecting my income was that my earnings would consist of premium fees and overtime. I had been promised a net of \$20,000 per annum the first year. It also included a minimum weekly draw of \$250. The WCB used the \$250 as a base salary.

Further, I am in receipt of a 10 per cent pension. This 10 per cent figure was arbitrarily instigated by WCB staff doctors. There was complete disagreement between them and the surgeon specialist the WCB insisted I continue to see. He has always said it is far more than one third.

Approximately a year after that, during my rehabilitation, I vastly modified my work circumstance. I was offered commission sales jobs by a competitor of the previous employer. This was still during my convalescent period from my first injury and I was able to sit up at my desk at home for almost half-day periods. The selling job would have been performed from the house since I was unable to travel and still required bed rest for at least half a day at a time. There was to be no salary or draw from this work, this new job; rather there was to be a commission only.

While trying to behave honestly, I reported the potential earnings to the WCB. Three days later, an officer of the board who would not identify himself told me that, as a result, my disability payments were cut in half. As a direct result, my potential to try this work was finished. I simply could not afford to live on an income reduced by 50 per cent.

Why? I lost my place of residence. I could not pay the rent. Bank loan payments could not be made and were stopped. I could not even afford a telephone. All of this while I could not remain out of bed more than half a day at a time. A two-block walk was simply far too much. I ended up in a rooming house around the corner from my apartment building.

A period of more than one year's further convalescence was required, and finally I did obtain a job in television as an audio engineer, stipulating light work only. However, I was still in such intractable pain that I could no longer perform even those light mixing duties successfully. The television station and I had to part company.

After a summer of freelance work in my craft, I had to find employment. I approached the audiovisual association and requested leads. I helped them stage their annual convention and was introduced to an exporter of production hardware from the United States who offered me commission selling work to be done from my home. My wife and I decided this was physically safe and might be economically viable, if blended with the light work of freelancing audio and her own income. Under the Foreign Investment Review Agency regulations, that importer was told to stop doing business in Canada.

I continued to accept audio work I felt I could safely handle, which was offered to me through my union. Over that second summer, at the end of that production season, I approached one of the manufacturers I had been representing through the importer. This firm offered me a Canadian distributorship, representing it in one half of our country. Although I was completely without funds, it was the only offer at hand. I felt obliged to try to make it work.

This was the formation of a company called Interface Animation Systems Inc. It was made possible because of help I received from my family. We were moderately successful, although I did not draw even \$10,000 from this company at any time. I continued this selling work and blended it with audio engineering work as it became available.

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At the end of August 1984, through my union, I accepted a booking for TVOntario as an emergency. Would I provide my services the next day? This job was to be half a day in the studio and one and a half days on location. The director of that production insisted I perform a double function to which I had not agreed. For example, it was heavy physical work requiring me to operate the audio boom by myself. This work is normally performed by an assistant.

I informed him I was wearing my back brace and otherwise would not even have been able to consider performing the double function. With great reluctance I agreed to operate the boom. Due to inappropriate and inadequate equipment and the necessity of keeping that equipment out of the camera shot, it was required that I place the microphone above the scene being shot. I was not tall enough. I requested something be brought for me to stand on. An office chair was provided.

While attempting to mount this chair I was already so distraught by the work conditions that I inadvertently used my previously weakened leg first to climb upon the chair. I lost my balance and was caught by a fellow worker just before falling completely. The afternoon continued under extremely distressing and horrible conditions. However, the damage had already been done.

Thinking that a few days' bed rest would alleviate another in a long series of repetitive pains, I remained in bed. In fact, I had no choice. Then I contacted the surgeon with whom the Workers' Compensation Board had insisted that I remain as a patient while on my WCB claim. He was not able to see me for more than 30 days, a not unusual occurrence.

I remained in bed and tolerated waiting out this amount of time. When I showed up for this appointment, I was about 15 minutes late. The secretary informed me that Dr. Carton was preparing for surgery and as a result could not examine me. Subsequently, she gave me an appointment another 30 days away.

Early in 1985, he was finally able to examine me and subsequently refiled his report with the compensation board. He informed me at this time that surgery was inappropriate and far too risky, and that I now had more than a two thirds chance of becoming paraplegic if he even attempted intervention.

The WCB adjudicator denied receiving Dr. Carton's reports of this examination. Additional copies were sent by the doctor's offices, receipt of which were again denied. This happened on six occasions. I remained in pure agony all this time. When a copy was delivered by hand to the adjudicator, the next day the same man denied again receiving this report, now copy 7. I proved that I knew he had had the report and his retort was: "Oh, that? That is not good enough."

That adjudicator's case load was removed from him. However, I now had to await the surgeon's in-depth medical legal report to the WCB which was a further 15 months in coming. During the waiting period another adjudicator assigned to my case insisted I close my company before anything would be done on my behalf. Rather than do so and create difficulties for other involved persons, I withdrew from the company and sought the advice of the office of the worker adviser. I could no longer afford legal counsel and was receiving help from social services.

The adviser's office decided that I had been mistreated under the act,

but it took until spring of 1988 to make these findings. An appeal to the WCB regarding my claim was filed at that time. While writing my commentary for the appeal, I had to relive every one of these highly negative experiences, and as a direct result suffered a totally disabling stroke which has left me paralysed on my right side. At last, for the first time in 11 years, I was free of physical pain, at least for a few weeks.

As I now continue to convalesce from this stroke, my completely debilitating spinal pains have become decidedly more perceivable. The appeal is still in abeyance due to bureaucratic mismanagement and various other negative misbehaviours at the WCB.

Mr. Chairman, members of the committee, my story can be told by a large number of injured workers who have suffered under the present system. My reading of Bill 162 will result in my story being repeated over and over again, because this bill seems to do nothing to improve the lot of injured workers. What we need is an act that will offer dignity and justice to those workers injured in the course of their employment. Please, cancel Bill 162.

Mr. LaBelle: Bill 162 is An Act to amend the Workers' Compensation Act. Normally when an act is amended, it is done so as a means of improvement. However, in the case of Bill 162's proposals, they must, along with the original act, be repealed and completely rewritten, with the majority input from organized labour rather than other jurisdictions; for example, majority employer input. It is labour that is ultimately and totally conversant with the pitfalls of imposed bureaucracy.

The Workers' Compensation Board, while it purports to be an organization whose sole purpose is to provide stability, dignity, help and income replacement to the injured worker, seems to work very hard at doing the opposite, certainly in the case of Brother McDonald, as we have just heard. Sadly, Brother McDonald's is not an isolated situation, for it takes very little to cause the Workers' Compensation Board to start putting people through the wringer; for example, for the employer to say yes to the form 7 employer question, "Do you have any reason to believe this injury is not work-related?"

Voilà. Immediately, you are sent to purgatory. The onus is not on the employer. Rather, it is on the worker to prove the accident was actually an accident. This is a long and tedious procedure. One does not waltz through the bureaucratic shuffle. Rather, one quickly learns to pick one's steps with great care, avoid all pitfalls, diligently fight one's way through all the games and outlast and overcome the barriers placed by the WCB system along the way, to exit victorious from one of these long-term battles.

I myself spent the better part of two years fighting the WCB, which chose to believe my employer that as an administration worker in a sewage treatment plant, handling all the papers and documents passing through various stages of the treatment process, which were handled by workers who certainly did not wash before recording data, I was not in a situation to contact infectious viral hepatitis.

After many rejections and every available appeal procedure up to and including the chairman and two representatives, one each from labour and management, I finally won out and my claim was allowed. However, this did not happen before I was in a position to give a medical course on the various

types of hepatitis, since I had to read through five publications in order to win this case.

We shudder to think of what is going to happen to future injured workers when no pensions will be allowed, one-shot financial assessments will be made and economic loss is no longer a great factor. As pathetically as the system can operate on occasion, there is at least some measure of comfort in that eventually you can usually receive some compensation—oh, that is, if you follow all the procedures and remember not to make any faltering steps in the bureaucratic shuffle along the way.

Scrap Bill 162. Scrap the Workers' Compensation Act. Write a new bill from word one, a bill that will remember to treat injured and incapacitated workers with dignity and respect, bearing in mind that these same persons should be able to understand their rights as well, their main right being to be decently compensated.

Mr. Tatham: I appreciate the comments. I appreciate the work that you people do because you get the work done.

Just listening to this, is it the bureaucratic system? How do you write a bill that is going to work? You are going to have bureaucrats with whatever you do. Reading this, and having been a member of this for a year and a half and listening to what goes on, how do you do this? How do you make this thing work?

1720

Mr. McDonald: The task is very difficult. It is perhaps virtually impossible to get all things correct for all people, but it seems that as I read the act itself rather than focus on Bill 162, in some ways some paragraphs could be seen to induce accidents. If I can be blunt for a moment, it is perhaps far less expensive to a corporation to injure a worker than it is to fire him summarily and without cause.

In my own circumstance, I have been very, very frustrated many times by my inability to take litigation against the employer. What was left out of my portion of the presentation was the circumstances of the second accident, wherein we who were working on the job on that day, on that location felt that the responsible parties had literally lied to us about where such work would take place, how it would take place and who was expected to do it.

The Ontario Provincial Police became involved in a little bit of the investigation of my second accident and one officer said to me, "If we could prove intent, we would have grounds for criminal litigation, criminal action." Proof of intent to cause harm is almost impossible, so such action could not take place.

It seems to me that the injured workers themselves who feel they might have been hard done by, or yourselves trying to write difficult law, might return the right to litigation to the injured worker, to act in concurrent steps with the Workers' Compensation Board itself. As I read the act, it says the compensation board shall have the right to take such action if it deems it advisable, and I am told it is very rare that it will use such power.

Mr. White: Mr. Tatham, if I may interject, I have to state to you quite clearly that the statement just made by Mr. McDonald is not necessarily the position of the Canadian Union of Public Employees. We do not believe

workers should have the right to sue their employer. We believe firmly that section of the act is probably quite correct. We do not have a quarrel with the fact that we do not have the right to sue our employer. We gave that up in 1915 and we are not suggesting at this time that we want it back.

Mr. LaBelle: Could I just make a comment? While we are not suggesting that we want it back, what we are suggesting very strongly—to answer your question about bureaucracy, of course we cannot do without a bureaucracy—is that certainly we can do without the implementation of the pitfalls a bureaucracy can impose on a person who does not understand everything that is written on a piece of paper in such a way that it does not just have two-syllable words.

While we are not saying you should reinstitute the ability to sue your employer, what we are saying is that we should have the right to expect we can be compensated when we have an injury without having to go through grief and agony and frustration to get it.

Mr. Tatham: Just one other question, if I may—I have asked this of every group—regarding Saskatchewan, have you ever checked with its dual award system to see how it has made out with you folks?

Mr. White: The information we have from the Canadian Union of Public Employees is that the workers are opposed to the deeming features of the bill in Saskatchewan.

Mr. Tatham: Is that the main—

Mr. White: That is their main concern, yes.

Mr. Tatham: Are they otherwise reasonably happy with it?

Mr. White: I am not sure, but some of the information we have received is that they are not at all pleased with the deeming features.

Mr. Dietsch: Are you saying that you contacted those people out there?

Mr. White: Yes.

Mr. Dietsch: Is that the message they gave?

Mr. White: That was one of the responses we received, yes.

Mr. Dietsch: You contacted your brothers in the union or—

Mr. White: Yes.

Mr. Dietsch: I see.

Mr. White: That was one of their comments.

Mr. Dietsch: Okay.

Mr. Mackenzie: First, I want to make it clear that as I think you know, this committee did not write this bill but was presented with it to try to deal with it. Second, the labour movement or the injured workers' clinics, which probably have the closest association with injured workers, had almost

no input into the drafting of the bill, so we start from there in trying to take a serious look at it.

Just one comment: It hurts every time you hear it, but 13 1/2 or 14 years in this place and at least two rounds that lasted a long time over problems with the WCB and injured workers mean that the horror story—I think that is exactly what we have had here today—is not new. We have had them before this committee before and I would hope would allow the members on this committee to understand the depth of feelings about the board and the current act, and their understanding of the battles with it and why they are now saying we need some changes.

The presentation you have made to us and are making to us now is something CUPE has put together. Their research people have taken a look at the bill—you have actually looked at the bill, looked at the sections of the bill, made an assessment of what it would mean in terms of the injured workers you have to deal with?

Mr. White: CUPE will be making presentations in, I suggest, all of the major cities. I will be making a presentation to this committee in Timmins on March 7 or 8, whatever the date is. We are in all the major cities. Certainly, this is the first of many briefs that you are going to be hearing from the Canadian Union of Public Employees.

Mr. Mackenzie: So it is fair to say that you—

Mr. White: —the bill and made a study of it; we will certainly be commenting more extensively on what we see wrong with Bill 162.

Mr. Dietsch: Could I have a supplementary to that, Mr. Mackenzie, please?

Mr. White, you will be making the presentation in Timmins yourself?

Mr. White: Yes.

Mr. Dietsch: Does CUPE have the same fears in Timmins as it has in other parts? Is it basically the same viewpoint? It is not different?

Mr. White: Yes.

Mr. Dietsch: I guess there is a common thread, if you will, on behalf of CUPE with respect to its concerns about areas of the bill. Is that fair?

Mr. White: Yes.

Mr. Mackenzie: I hope in using a supplementary on my question that my colleague Mr. Dietsch is not trying to make the point that because there is a common thread only one CUPE group should be allowed to appear before this committee. I think what you need to know is the depth of the feelings of the various groups in different parts of Ontario.

Mr. Dietsch: They are making presentations in all seven centres. That is what he said.

Mr. Mackenzie: Are you saying they should not make appearances?

Mr. Dietsch: No, I am not—

Mr. Mackenzie: Fine and dandy. You used my supplementary to fly your kite. Just leave it at that.

Can I ask you a question I asked the first group that was before us today. I will give you the three reasons, not just one, so I am not accused of misleading anybody.

In a speech just a couple of days ago to the Corpus conference, the Minister of Labour (Mr. Sorbara) made a comment that I found inappropriate. His comments were:

"Why are some people so angry about" this bill?

"I think there are three reasons.

"First are those who have become angry at the system as it now exists. In the past few years we have seen the establishment of three organizations of employers with concerns about workers' compensation policies and costs. We have also seen the formation of several union of injured workers organizations.

"It seems to me that every time we go near the system to fix it this anger overflows in a reflex action."

I guess one my questions is, is it just a reflex action your organization has?

He says: "Second, some of those who are most angry are victims of unfairness in the current system, who don't feel enough has been done to address their specific needs."

I suspect from the nodding of heads that certainly meets the criteria of some of the people who are sitting here before us right now.

"Third"—what I found most inappropriate—"some people are angry—or at least are showing anger—for reasons that have nothing to do with whether the new system is better than the current one. Some think that the only solution to problems with workers' compensation in this province lies in vast increases in spending.

"They are misfortune-tellers—and that's all they see in their crystal ball.

"These people can be expected to remain angry and to try to use their anger against this bill as long as the government remains firm in its commitment to implement reforms."

Does that apply to you? Is this the reason CUPE is before this committee?

1730

Mr. White: On June 20, when the minister introduced the bill, he talked of fairness. If we look at section 45, for example, we talk about noneconomic loss. We think of a worker who perhaps loses an eye and under the old meat chart may have received a pension of from 18 per cent to 25 per cent

for the loss of that eye and he would receive that pension for the rest of his life.

Under the proposed section 45 in Bill 162, that worker would be assessed, but we do not know under what method at this point. It may be a 15 per cent, 20 per cent or 25 per cent noneconomic loss based on the total sum of \$65,000. But then, if that worker is able to return to his or her regular job, no further consideration is given for the fact that worker has just lost an eye. I think that is unfair and I speak for the CUPE when I say we believe that system is unfair. A worker who loses an eye in the course of his or her employment should be compensated in the same way he is now presently compensated, except perhaps that we should be looking at the old meat chart and perhaps addressing the inadequacies there.

Workers are angry? Certainly, they are angry. I can give you all kinds of horror stories because I deal in compensation on a daily basis. Workers are angry when they have to attempt suicide because they are not getting money from the Workers' Compensation Board. That sort of thing has to be addressed. When the minister talks of fairness, we have to look at those workers who are currently in receipt of workers' compensation and recognize that the fairness has to start there, not with a bill that says any workers injured in the future will be looked after in a different manner.

Mr. Mackenzie: Given the motive as it is there, It certainly does not apply to your organization.

Mr. Phyllis: Definitely not.

Mrs. Marland: Mr. McDonald and Mr. LaBelle, there are two very disturbing parts to your presentation that I am concerned about. In your case, Mr. McDonald, you talk about a figure being incorrect from information provided to WCB by your employer.

Mr. McDonald: Yes.

Mrs. Marland: Mr. LaBelle, you mention a similar suggestion when you say you spent the two years fighting WCB, which chose to believe your employer.

I know that in reality, of course, there are always two sides to every issue, but it is really very upsetting to find that is something that probably no bill is going to remedy.

Mr. LaBelle: Right.

Mrs. Marland: But it is sure disillusioning to—I have heard from some of my own constituents that in fact that is true in a number of circumstances. I just wonder if there is anything, based on your experience and your involvement with CUPE over the years, that you could suggest could be written into legislation that could avoid inaccurate information being admissible to these hearings.

Mr. LaBelle: I do not even think it is a question that inaccurate information is made accessible to the board. I think what it is, is that the act allows the employer to diddle so that the agony can be prolonged. It is almost as though you are going to be penalized for life because you dared to have an injury that is compensable. That is the first situation.

The second is, for example in my case, my employer said: "That person

couldn't pick up infectious viral hepatitis. He works in an office. He's not out shovelling excrement from the bottom of an elutriating tank. But the person who was out there doing it and keeping track of the charts and records was also writing records that were coming into my office, which I had to handle.

Next to your hair, paper is the most viable source of germs we have. You know, it took a long time to make people see that. Fortunately, in my case, I had a doctor who was from Malaysia and who had many, many years of experience with 18 different types of hepatitis. He provided me with a stack like this of medical textbooks and said: "Take them home and study it. You're going to have lots of time." He was right.

Mrs. Marland: It is pretty disconcerting that you, as a nonmedical person, had to develop that evidence, though.

Mr. LaBelle: That is the point. Why does the onus have to be put on the person who was injured? The onus should not be there.

Mrs. Marland: That is right, and someone who might have been less tenacious than you or had less ability than you to do that study and those interpretations may not have been as fortunate as you in finally winning his argument.

Mr. LaBelle: No doubt.

Mrs. Marland: In Mr. McDonald's case, he is talking about incorrect information being provided by his employer. I believe there should be a body that has to make a ruling in every kind of case, not just what is before us today. Is there something that you can see that could be written into the bill that would protect decisions being made with gerrymandered figures or information, which is this point that you both have made? Mr. McDonald, you have been after it for 11 years. You must have some ideas on that.

Mr. McDonald: Yes. With regard to my own appeal, the firm that was the employer at the time in 1978 has been sold. The adjudicators are soliciting affidavits from the original employers in their person rather than as directors of that company.

Can a system be developed where the individual decisions of the individual adjudicators are monitored and any response or rebuttal can be assessed and acted on expeditiously? I refer you to my 1984-85 circumstances. On the whim of an adjudicator at that period merely saying, "No, I haven't received your medical reports," no action was taken. When it was finally proved to him he was in receipt of seven copies of the medical data, it was his whim and he said, "It's not good enough."

Please, could we establish a system where the injured party is not penalized for that assessment? If the man's assessment, and it could have been a reasonable one, was that the medical information was not good enough, then there should be correspondence from the officers of the Workers' Compensation Board to the doctors, rather than making it my responsibility and my penalty. This was somebody they insisted I see, a very senior surgeon. This was no small accident. They were acting on my behalf when they said, "We will not operate," and yet an adjudicator said years later that an operation was not required. "You didn't need any surgery."

Mr. LaBelle: First of all, we recognize that the bill was not

written by this committee and we hope we are not leaving the idea that we feel you did. But the bill certainly should start from day one and it should certainly be in favour of the worker. If this is the Workers' Compensation Act, it should be written with the worker in mind. It should be written in such a way that the employer is forced to maintain safe conditions, conditions for working that are not slave conditions but that are conducive to the social aspect of today and not 40 years ago. An act should be written in such a way that the onus is not always on the person who has been injured, because psychologically, if nothing else, he is not equipped at the time of an injury.

Mrs. Marland: I can understand your saying that. I think from our perspective in being fair, the only way any form of Bill 162 will have credibility with the public is if it is so well written that in fact it is not in favour of the employer or the employee. The kind of protection that you are looking for, David, in terms of protecting the worker, really comes under the health and safety branch in terms of the workplace environment. That kind of enforcement and those kinds of statutes have to be there and actively enforced in the interest of employees and workers around the province.

I think what we have to get out of Bill 162 is something that is indeed fair to the employers as well as the employees, or else we will not have either. If we do not have something that works and is affordable, then we will end up that there will not be jobs for workers. Whether or not that environment could be safer, they just will not exist.

I think we have to get to the point where something works fairly for both sides, but with some of the examples we are hearing obviously it is not fair on both sides. If you have a body which sits as an autonomous court would sit, then we have to be sure there is a way of guaranteeing that the information it is dealing with is accurate and is everything it should be.

I think the example, Sandy, that you have just given about somebody saying he did not have full information when in fact he did—there is no way any one of us on this committee would accept or defend that kind of thing happening. It would be important, I think, if you are going to have an act to protect workers in this province, that it is workable for both sides and then it becomes defensible as a process for both sides.

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Mr. LaBelle: As a means of rebuttal, Mrs. Marland, if we enforced safety regulations and good conditions for working, there would be considerably less occasion to implement the use of workers' compensation.

Mrs. Marland: Right.

Mr. LaBelle: If at the same time, while we are writing the Workers' Compensation Act, the employer had to pay some kind of fine for a situation that created an injury that caused distress to a worker, there might be another reason for having less workers' compensation and fewer people injured. We do not want to see anyone injured, we do not want to see anyone hurt but we also do not want to see anyone given a runaround because of workers' compensation.

Mr. McGuigan: I would just like to point out to David LaBelle. It is not to do with what is before us here, but it is following up somewhat on Mrs. Marland's comments about the Occupational Health and Safety Act. We do have amendments coming along to that act, which hopefully will do quite a lot of

the things you are talking about. The fine is \$500,000 to a corporation that does not carry out its responsibilities. I know this would probably be the comment you would like to make on that, but based on some of this terrible experience Mr. McDonald has had, the changes are coming down the road. This, of course, does not help his case, which I think touches the heart of every person here.

I was a small business person. Unfortunately, I had to fill out more than one of those injury forms, although fortunately no one was really maimed for life. Most of the injuries were where a person was off work for three or four days or a week. I never once filled out the question, "Do you have any reason to believe this injury is not work related?" I do not think I had any occasion ever to do that. But you go on to say that immediately you are sent to purgatory and the onus is not on the employer, rather it is on the worker to prove that accident.

Never having gone through that process myself, I just wonder if you can tell us what happens when a person fills in that box and says he believes it was not—

Mr. LaBelle: What happens when the employer or somebody who is on a bit of a power trip realizes he can exercise a bit of authority and fills that in and implies that the person is illicitly claiming compensation for an injury is that immediately the board puts a stamp on it as a question mark. Then all kinds of forms go out. They go to the injured worker. The injured worker then is undoubtedly denied and has to go through the series of appeals, working his way up to the board.

Mr. McGuigan: Is it just summarily denied?

Mr. LaBelle: It is just arbitrarily done. All you have to do is say, "Yes, I do." You do not have to give an explanation, although in many cases they do give an explanation or they give some reason why they believe it. I believe that if I am going to say, "You spilled my glass of water," then I should be able to say, "I know you spilled the glass of water because I watched you reach over and do it and I have Mr. McGuinty here who can prove it for me." I should not have to say, "Prove to me that you didn't spill the glass of water," when you do not have a witness, you do not have anything. My word is going to overrule yours.

I am sure Brother White has a lot to say on this subject, because he has dealt with it far more than I have. I have dealt with it only on a smaller scale of people, but for many years.

Mr. White: The way the system works is that if the employer answers question 4 in the negative, then it means an immediate investigation. An investigator is appointed who interviews the employer, the worker, any co-workers and the doctors who may have treated the worker and returns that information to a claims adjudicator who then makes a decision.

But bear in mind that in the city of Toronto there are insufficient investigators so that that worker is undoubtedly laying around for three or four months before he may even see the investigator. Then, of course, it goes back to an adjudicator whose case load is running anywhere from 200 to 250 and put on the bottom of the pile for several months again before that adjudicator looks at the file. It is just a bad system.

Mr. McGuigan: Is that true today now that we have worker advocates and so on?

Mr. White: Yes, they are overworked as well.

Mr. McGuigan: Fortunately, I never filled in that box. I have often wondered what would happen but I never had any occasion to do it.

Mr. McDonald: Those people who were working for you sure are thankful that you did not.

Mr. Chairman: I think that is all. There is going to be a vote in the chamber momentarily, between now and 6 p.m., so we should adjourn. May I suggest that there be a steering committee meeting on Monday at 9 a.m.? Since it is only three or four people, we could have it in my office in room 347. Is that acceptable to everyone?

Mrs. Marland: Are we not sitting over in the Macdonald Block on Monday?

Mr. Chairman: Yes, starting at 10 a.m. We can carry on this debate later perhaps. I would just like to thank these gentlemen for coming before the committee. We appreciate it.

Let's talk after we adjourn. The committee is adjourned until Monday at 10 a.m. in the Macdonald Block.

The committee adjourned at 5:47 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

MONDAY, MARCH 6, 1989

Morning Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr. Black

Nicholas, Cindy (Scarborough Centre L) for Mr. Brown

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Wildman

Sola, John (Mississauga East L) for Mrs. Stoner

Clerk: Mellor, Lynn

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

From the Grocery Products Manufacturers of Canada:

McGregor, Dave, Chairman, Workers' Compensation Committee, Human Resources Council; with Wrigley Canada Inc.

Banks, Sandra, Director, Government Relations

Bergmame, Dean, Human Resources Council; with Redpath Sugars

From Robert C. Cronish and Associates:

Cronish, Robert C., Barrister and Solicitor

From the Ontario Mining Association:

Pirie, Jim, Past Chairman, Workers' Compensation Committee

Blogg, John, Manager, Industrial Relations

From the Employers' Advocacy Council:

Wadsworth, Peter G., Policy Chairman, Toronto Chapter

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, March 6, 1989

The committee met at 10:05 a.m. in the Ontario room.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Mr. Chairman: The standing committee on resources development will come to order as we continue the process of hearing representations on Bill 162, An Act to amend the Workers' Compensation Act. We have a full agenda today. At the end of the day, we go to Timmins for hearings, so I think we had best try to move along as quickly as we can, keeping as tightly to our schedule as was proposed.

Miss Martel: I appreciate the point you are trying to make, Mr. Chairman, and I will try to be brief. However, given that we are starting the hearings now and will be going out on the road, we are in Toronto where we have a wait list of some 80 people at this point in time. In spite of Mr. Dietsch's motion last week, we will only be able to accommodate 18 more of those groups, which leaves us some 62 groups and individuals who do want to be heard on this bill. So I am going to move again today, before we start, that all groups and individuals who remain on the wait list in Toronto, some 62 now, will be accommodated by this committee and will be heard during the summer of 1989.

Mr. Chairman: The chair is having a little difficulty with the way it is worded, if it is the same motion that was put to the committee on Thursday. Perhaps you could give it to us again and put it in writing.

Miss Martel: It seems to me that the motion on Thursday was added to Mr. Dietsch's motion. It was an amendment to that, which suggested that all groups be accommodated. It did not list any place in particular. So I am moving this one in regard to Toronto and the hearings here in particular.

Mr. Chairman: Because we do not have a representative from the Progressive Conservative caucus here at this point, I think it would be a little much. Would you be prepared to table that motion until prior to adjournment at noon? Is that appropriate?

Miss Martel: Yes.

Mr. Chairman: Do you wish to speak to it now?

Miss Martel: The only thing I would like to say—we have heard it a little bit before, but I do think, if we are going to be serious about trying to accommodate people, 18 just is not making the mark at this point in time. We are still looking at some 62 groups in Toronto that do have a right to be heard. So I go back to the premise that if we are serious about these hearings and about what we are trying to do, then these people should be given every opportunity to be accommodated.

Mr. Chairman: When we adjourn at noon, if the opposition wants to

speak to the motion, of course that will be appropriate. We will table Miss Martel's motion then until prior to adjournment.

This morning, we have with us the Grocery Products Manufacturers of Canada. We are pleased they are here. If you would introduce yourself and your colleagues, we could get under way.

Mr. McGregor: I am Dave McGregor from Wrigley Canada, and the chairman of the workers' compensation subcommittee of our human resources council at GPMC.

Ms. Banks: My name is Sandra Banks. I work as the director of government relations with the Grocery Products Manufacturers of Canada.

Mr. Bergmame: I am Dean Bergmame. I am with Redpath Sugars and I am a member of the human resources council of GPMC.

GROCERY PRODUCTS MANUFACTURERS OF CANADA

Mr. McGregor: The Grocery Products Manufacturers of Canada appreciates being given this opportunity to address the committee on what its members feel is a very important and critical change to the Workers' Compensation Act, Bill 162.

Our organization is a national association of 140 companies engaged in the manufacture of food, nonalcoholic beverages and an array of other national brand consumer items. In food processing alone, we employ 85,000 employees, second only to auto parts in the Ontario manufacturing sector.

We support the Ministry of Labour's intentions to improve the workers' compensation system. However, we have some concerns on certain elements of the proposed bill.

The rapidly increasing cost of workers' compensation in Ontario, the escalating deficit of the board and the inability of our members to effectively manage workers' compensation costs, as they would other parts of their business, has become a major concern to our members.

We would first like to comment on the recently announced amendments:

First, injured workers are to be offered re-employment in the form of modified work, in keeping with the spirit and intent of recent changes to the Human Rights Code which require employers to accommodate disabled workers without undue hardship on the employer. We support this change and we feel it is a much fairer approach.

Second, injured workers may choose either a doctor from a government-appointed roster or one suggested by workers' compensation for the purpose of determining the degree of impairment. The change from a board-appointed doctor to allowing workers a choice from a roster will have to be carefully monitored, in order to ensure that those doctors on the roster do not come to be seen as pro-worker or pro-employer. This may have been more easily controlled, as had been suggested initially, if all doctors were board-appointed.

Third, with regard to the amendments, the opening up of the appeal procedure to the Workers' Compensation Appeals Tribunal for noneconomic loss payments and re-employment decisions will also require that the tribunal be

comprised of individuals seen to be neutral with regard to worker and employer concerns, or that members of the tribunal equally represent workers and employers.

With regard to the bill as proposed, we have the following comments:

1. The ministry has suggested that the net effect of the proposed changes will be revenue neutral. However, we have some concerns that the benefit changes for noneconomic loss, the increase in the limits for economic loss, the provisions for loss of retirement income and the potential for longer claims will not be offset by the board's attempt at active rehabilitation and an earlier return-to-work date.

2. The increase in the earnings ceiling beyond the current 1989 limit of \$36,600, or \$17.60 an hour, will result in a significant cost increase for our members with minimal benefit for most of our employees. The majority of employees who would pick up additional coverage by going to 175 per cent would for most of us fall in the supervisory management category and be considered relatively low-risk occupations. I guess this would depend on how much stress management comes into that group in the future.

If it is the board's desire to provide a higher level of wage loss protection for employees in the forestry, mining and construction industries as noted in the bill, possibly a two-level concept could be introduced with a higher ceiling applying only to these and other higher-paying, higher-risk industries.

3. While the intent of establishing a retirement pension benefit to compensate for loss in the capacity to save for retirement is reasonable, the implementation of it must be reviewed. The funding for any pension benefit could be derived from the earnings loss award itself. Additionally, where the level of pension income under an employer plan is unaffected by the loss of earnings capacity, no pension should be payable that would result in retirement benefits for an injured worker being higher than those for an uninjured worker.

4. The follow-up review procedure for lost earnings capacity at two and a further three years after the initial award has been set is reasonable in most cases. The bill permits a worker whose physical condition significantly and unexpectedly deteriorates to apply for a review of his compensation even if this occurs beyond the second review date. No provision appears to be available to an employer after the second scheduled review to request a review where the compensation level of a rehabilitated worker may have increased over what he had been earning in a pre-injury occupation.

As an example of this particular point, I think about our particular situation with my employer where we are posting now for jobs, and more and more employees because of their higher education in our labour-type positions are applying for positions in the office and getting in and doing very well. An injured worker could be off work, go through a successful rehabilitation program and then possibly come into a tight labour situation like data processing and be trained in that area, and could, after the five-year period—actually, it could be seven to 10 years before he has developed the experience and the knowledge of that particular area—be at a higher level of earnings than had he stayed in his previous labour position. That is an example of that particular concern we have.

5. The requirement for the employer to justify the termination of a

reinstated worker within six months of reinstatement is taking the bill into areas better handled by employment law. Situations may exist where a reinstated employee has been terminated due to wilful neglect or misconduct or where he has been discharged subject to just cause in the provision of a collective agreement.

6. Six months after the date of injury the board is required to offer vocational rehabilitation assessment to the worker. What has not been clarified is whether the worker could refuse such an assessment, and if he did refuse, whether his entitlement to benefits would be jeopardized. The worker is provided with a full copy of the assessment and the employer is only notified of the results. Given the seriousness of some potential cases, the employer should be entitled to all information relevant to the injury and subsequent rehabilitation in order to be able to determine the logic and rationale behind decisions. Some confidential medical information may have to be excluded.

This would seem like a remote possibility in this particular case, but here again I have had a personal case where an injured worker did refuse to be assessed for rehabilitation. This is something we could easily face down the road and should be addressed at this point with regard to the bill.

We hope our comments have given you some additional input from which you can make your final recommendations. We do concur that the principles of the bill will result in a better and fairer workers' compensation system. However, we caution the ministry to be cognizant of the associated costs of the proposed changes.

Although not covered by Bill 162, we as an association wanted at this time to reinforce our support for the experience rating programs, such as new experimental experience rating under workers' compensation, that are offered by the board, which are designed to give employers more control over their compensation costs.

Again, on behalf of the members of GPMC, thank you for allowing us to present our views on this particular piece of proposed legislation. We would welcome the opportunity to discuss or comment on future government initiatives.

Mr. Tatham: Just briefly, on number 2, could you explain that two-level concept? How would that work?

Mr. McGregor: Our thinking on this particularly point was—I think it was in the narrative somewhere with regard to the bill—that it was pointed out on the earnings ceiling that particularly in the industries of forestry, mining and construction, the intention was to cover more employees because they would max out at a particular level of compensation.

Our suggestion here is that possibly you could look at the industries that were highlighted there and there might be additional industries that are noted high payers. The earnings ceiling would not have to go that high for most of us but would only apply to those particular industries that are higher paying and therefore should be covering a larger majority of their employees.

Mr. Tatham: I just do not quite follow. If they are not there, what difference would it make? In other words, if you are employing people at a certain wage level and the level happened to be up here, what difference would it make?

Mr. McGregor: The employers would have to pay additional premiums.

If the ceiling is higher, we have to pay additional premiums on those employees. My point here is that for us the majority of those employees would be in management/supervisory positions. We are still paying premiums on the assessments for those employees.

Mr. Chairman: But you do point out they would tend to be in the low-risk area anyway.

Mr. McGregor: Yes, they would be in the low-risk area. However, we would still have to pay premiums for them. Low-risk in terms of costs for the board.

Mr. Tatham: In other words, if everybody was making, say, \$10 an hour or \$15 an hour, you are going to be paying up here. But you are only going to be paying on the basis of the people you have employed, are you not? It is not a big deal but it just does not click.

Mr. Philip: If they are not hurt, why would their premiums go up?

Mr. Tatham: Yes.

Mr. McGregor: I did a rough calculation last week. Again, my particular employer would have 50 employees who would fall in this supervisory/management group and we would now have to pay premiums if you go above the \$36,000 per year. It goes up to \$44,600, I think it was. We have to pay per \$100 worth of premium on those increased assessable earnings. So whether or not they have a claim, we still have to pay additional premiums on them, say, \$4 per \$100 worth of payroll.

Miss Martel: But you are already in a low-risk category, are you not? That would not change. Really, the way your assessments are going to be hiked up or down is going to be dependent upon the number of employees who are hurt because you would already be in a fairly low-risk category.

Mr. McGregor: No, our assessments would directly go up because another \$10,000 worth of somebody's salary has to be covered. That is immediately going to be a jump in our assessment.

Mr. Chairman: It is based on \$100 worth of payroll.

Mr. McGregor: That is correct.

Miss Martel: Can I ask if you can submit what your estimates were—you said you did it in rough—to the committee so we can take a look at them? Would that be possible?

Mr. McGregor: Sure. I will have to clean them up a little bit.

Mr. Tatham: On number 5: What would you suggest there? How do you handle a situation like that where a person comes back to work? What would you suggest should be done?

Mr. McGregor: I would think it would come out of the area of responsibility under this particular bill and have to be addressed. Under employment law, you cannot terminate people in that sense, so it would be left to them to decide on that. If it be a union situation, the union would grieve it. Otherwise, you would process it through the employment standards branch.

Mr. Chairman: Mr. Philip?

Mr. Philip: Mine was covered by my supplementary to Mr. Tatham's.

1020

Mr. Dietsch: I thought I understood you to say that through your personal experience, you had employees who had refused to take vocational rehabilitation assessment.

Mr. McGregor: That is correct.

Mr. Dietsch: Would you just expand on that for me? I guess the question I would ask of you in that relationship is, do you feel that vocational rehabilitation assessments should be mandatory?

Mr. McGregor: It is hard to embellish on the example without giving you a little bit of history on this particular case. I will make it very brief.

The case in point was an employee with a back problem. Her concern at the time was that going for a reassessment would possibly further injure her. She saw the reassessment potentially doing some further damage to her back. The person I was dealing with at the time from the Workers' Compensation Board was frustrated somewhat by the lack of ability to get the person in for a particular assessment and to take care of it.

There was some discussion as to whether her benefits should be reduced. That was only sort of a last resort to motivate her to go for this assessment. It was only that, just a medical consultation assessment to see what she could possibly do down the road. She continued to refuse and it was only as a last resort that they said they were going to yank benefits totally. Over a period of time, she was sufficiently motivated to go and see them.

I think the reassessments are required. I toyed a little bit with whether I should put in here that I think you should do them sooner, but I had to be realistic in terms of the number of cases that come into the Workers' Compensation Board. Some initial contact is going to take place at 45 days and, I guess, depending on the degree of that particular contact and the thoroughness of the assessment made as to whether the person should undergo it right away, some sort of vocational rehabilitation assessment would be important.

I would not like to leave them all to go to six months. Hopefully, some action would take place at 45 days or possibly even sooner if a workers' compensation person decided he or she should probably be reviewed.

Mr. Dietsch: There is the question of whether you feel they should be mandatory.

Mr. McGregor: Yes, I do think they should be mandatory.

Mr. Dietsch: In all cases?

Mr. McGregor: I view the assessment for rehabilitation being one that would be something an employee and an employer would want to be doing in order to get them fit for work again, either with the employer or with another employer in the case of a heavy occupation like construction or something like that. I would be somewhat at a loss as to why an employee would not want to go at that point in time so, yes, they should be mandatory.

Mr. McGuigan: Under your point 2, you say: "The change from a board-appointed doctor to allowing workers a choice from a roster will have to be carefully monitored in order to ensure that those doctors on the roster do not come to be seen as 'pro-worker' or 'pro-employer.' This may have been more easily controlled if all doctors were board-appointed."

From my work in representing people from time to time who have cases against the Workers' Compensation Board, they seem to universally feel that the doctors are pro-employer, that they do not have any control and that their family doctor is not listened to. It seems to me that by bringing this change to the system we are certainly addressing what is perceived to be a present bias today.

I fail to see the logic of your statement there. You say, "This may have been more easily controlled if all doctors were board-appointed." There are a lot of people who feel that works against them at the present time.

Mr. McGregor: Having had issues with the board sufficiently, I guess I have the feeling that the board doctors are not necessarily employer-slanted by any means, but I do appreciate that. I guess that is why I phrased it the way I did. I think the onus will have to be on someone, presumably within the board or whatever committee would review them, to ensure that no one doctor got to be sort of pro-employee and, if it were a union situation, people might say, "Okay, we're going to the board and let's get John Doe or Mary Sue to be our representative, because she is more often than not going one way." I am not sure exactly how one would monitor that sort of thing, but I point that up as a caution. I guess my belief was that where the board had appointed everyone and controlled that, it would have more influence on that.

Mr. McGuigan: It just strikes me, as a matter of fairness, that by bringing this choice to the injured worker, we have gone a step towards helping out that bias, and whether that bias is correct or not, I do not know.

Mr. McGregor: I hope it would not come to the point where an employee or a union group gets a doctor and then the company gets its doctor and then there is a standoff at that point. I am pointing it out, really, as a caution; that is all.

Miss Martel: Let me continue the line of questioning on rehabilitation. You were asked a question about whether you thought an assessment should be mandatory, and you gave the case of the woman who did not want to be assessed. I suggest that if she were going to be sent to Downsview, neither would I want to be assessed, but do you have other cases or is that the one that comes to mind?

Mr. McGregor: That is my only personal case with going the full route of rehabilitation. Our particular record is pretty good and we do not usually have anybody off for any lengthy period of time.

Miss Martel: Okay. You employ 85,000 people. Were you talking about just one in your own operation—

Mr. McGregor: That is right, yes.

Miss Martel: —or are you talking about industry-wide?

Mr. McGregor: I am talking about my own, personal experience with rehabilitation; there has been only that one example. We did not poll our members on their assessment with that particular issue.

Miss Martel: In terms of rehabilitation, you have said you felt an assessment should be mandatory. What about rehabilitation services in total; not just an assessment but actual services?

Mr. McGregor: In terms of providing the services or that the employee should be required to take them no matter what?

Miss Martel: I think if they were offered, the employee probably would. The problem is that under the bill it is not an obligation on the board to offer rehabilitation services. The only thing the board has to actually offer is the assessment. We have had some discussion in committee as to whether rehabilitation services should be an obligation on the board to provide. I guess that is what I am getting at.

Mr. McGregor: I am hesitating only because I am trying to think of an example where you would not and I cannot, off the top of my head, so a qualified answer would be yes, I think they should be offered and made mandatory.

Miss Martel: As the employer, you would participate in any way you could with the worker and with the doctor.

Mr. McGregor: Actually, I like that part of it where they pointed out that the employer would be involved in the establishment of the rehabilitation program. That was a good feature, yes, and we would participate.

Mr. Dietsch: I would like to follow up on Ms. Martel's last point and the point that was raised with respect to, first of all, if the assessment is mandatory, it is understood that it will be taken. If you provide that full range of services to the employee, do you think it should be mandatory to take those services, in consultation between the employer and the employee in working those things out?

Mr. McGregor: Yes.

Mr. Dietsch: I am thinking in my mind of the situation where perhaps the services may be offered and the employee says, "No, thank you." Then what do you do? I would like your response from a management point of view. You feel that they should—

Mr. McGregor: I guess the only instance where an employee would refuse them would be that presumably he has set up some sort of rehabilitation program on his own or through his own family doctor or he knows somebody. But, hopefully, the board's program would, in fact, be the best around and certainly the most knowledgeable in working with both the employee and the employer groups. Therefore, if there were some alternative, which I cannot think of, it would be monitored and case-managed, if you will, by the Workers' Compensation Board at that point.

1030

Mr. Chairman: Mr. McGregor, we thank you and your colleagues for your presentation to the committee. We appreciate it.

The next presentation is from a face familiar to those of us who have been involved in workers' compensation matters around Queen's Park for a few years, Mr. Cronish. He is a barrister and solicitor; not only that, a QC.

Mr. Tatham: Are there still a few of those around?

Mr. Chairman: That is right.

Mr. Chairman: Mr. Cronish, welcome to the committee. You may start whenever you are prepared.

ROBERT C. CRONISH AND ASSOCIATES

Mr. Cronish: Thank you for enabling me to represent my constituency here this morning. Mr. Wood, of my office, is on my left.

We act on behalf of a number of employers, both through their associations and individually. We represent the Reinforcing Steel Institute of Ontario, the Mechanical Contractors Association of Ontario and Toronto, and the Canadian shipping association. We act for several public sector employers in the areas of municipalities and hospitals. We also act for private sector employers in the area of manufacturing, transportation, the service industry and the construction industry. In fact, we touch every industrial base that is administered by the Workers' Compensation Board of Ontario.

We have been active in the area of workers' compensation since 1971, and we have, as you are aware, conducted many programs both for the Law Society of Upper Canada, as well as for different employer-oriented groups.

We have a number of very real concerns with the proposals contained in Bill 162. We also know that the issue of costing is an area that has not been addressed by this committee in its public deliberations. I will touch upon that area because costing of this program will represent a dynamic shift in the equities which exist between employer and employee in Ontario.

In dealing with the materials that are before you, there is a prima facie problem with respect to the legislation as drafted between federal employers carrying on business within Ontario, as well as employers within the area of interprovincial trade and interprovincial commerce as it pertains to the provisions of section 54b of the act dealing with reinstatement and re-employment.

It is submitted that those provisions contravene the Constitution Act and, as such, would be illegal and would be struck down by a court of competent jurisdiction. There are three cases presently known to the Attorney General (Mr. Scott) in this area, those being the Alltrans, Bell and Canadian National Railway cases, the latter being a Supreme Court of Canada decision which was issued some three months ago. It dealt with the limitations upon a provincial compensation agency for applying health and safety standards within a federal undertaking.

The legislation makes no redress in the last minor amendment that the honourable minister put forth to deal with the jurisdictional issue as to what an Ontario government can impose upon a federally regulated corporation engaged in interprovincial trade and subject to federal Department of Labour regulation.

It is a matter of substance that the committee has not addressed in its concern and it is an issue that is vital to the legitimation of Bill 162.

The other area that the bill does not address is the imbalance or the lack of equity that exists on a 90 per cent net earning basis. You must

realize that most employers in Ontario are well above the minimum wage level that is subject to workers' compensation. In fact, a ceiling of 90 per cent net in excess of 70 per cent of all industry destroys the incentive to return to work.

The most simple example I can give to you is that of a seaman who earns \$44,000 a year. He makes that for working nine months of the year. At present levels, compensation as of the end of December was \$454 a week. The worker at 90 per cent net is receiving the maximum amount of compensation. He cannot earn more because, first, the 90 per cent benefit level that he is deemed to earn is at maximum. Therefore, after income tax, his incentive to return to work is nil.

First you assume your tax bracket, graduating up to 40 per cent. You will see, after tax, that worker's \$800 a week brings it down to more or less \$520 a week. The incentive of returning to work for \$60 a week—the difference between \$454 and the \$520 a week the worker would otherwise earn—is not there. This bill destroys the incentive to return to work, because compensation levels are so high. In fact, employees in Ontario have the highest benefit level pro rata of any jurisdiction in America, except for employees of the city of Washington, DC—being a federal jurisdiction—and the state of Alaska.

Competitively, industries in New York state pay workers \$150 a week for total temporary disability benefits. In the state of California, the most recent 1987 amendment provided for workers to receive \$228 a week for total temporary disability benefits. Even grossing up on a five-to-four basis, the inequity between benefits in Ontario and benefits in our free trade partner's jurisdictions is so high that the incentive to compete and return to work is significantly lessened.

It is therefore proposed that this committee consider returning to 80 per cent of gross earnings as a more equitable basis, to encourage return to work, to encourage vocational rehabilitation plans as proposed in the legislation and not to destroy the incentive to return to gainful employment. On an 80 per cent gross earnings basis, there will be far more equity between the relationship of what workers' compensation has been designed to be by this government and its intentions. A 90 per cent net basis is inequitable and not in tune with today's economics in the society of our business world.

In dealing with the other problems we have within the proposals, there is no distinction of part-time employment. Take, for example, the construction industry, where a mechanical contractor has a job that is going to last three months. He hires a worker for those three months and the last day or two of the job, as is well known to everybody, completion happens in a building structure—you can visibly see it—and the worker comes forward and says: "I have a pain. My back hurts me." That worker is paid for the balance of the duration of his pain or, so long as he receives medical confirmation of disability, full benefits, notwithstanding the fact that the job for which he had been employed no longer exists. The project is finished.

In northern Ontario, when you are building megaprojects such as pipelines, power plants and pulp and paper mills, there is no other work in the community. Workers stay on compensation benefits for undue periods of time. It is suggested that the committee consider an alternative: once the work has been completed and a reasonable period of time has elapsed in order for maximum medical rehabilitation to consider, the basis shift perhaps on to employment insurance, perhaps to pension, but that total temporary benefits be

capped in consideration of where there is short-term employment, so as to prevent abuse of the system and overcompensation of workers.

The board stresses that permanent impairment awards have been designed to reflect a worker's future loss-of-earning capacity, and there has to be some interim measure that this committee considers to bridge the gap created through the disincentive where there is short-term employment. The matter is of particular concern to municipal corporations, for example, and their parks and recreation committee, where the work year starts April 13, April 15 or April 18 and terminates October 20, November 15 or December 1 and there is no longer employment. Yet this issue has not been addressed whatsoever in the deliberations by this government.

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In dealing with the other issues, dealing with contributions, section 5a of the proposal deals with mandatory contributions by employers, yet for federal employers there are distinct rules that prevent such mandatory contributions because it would cause a breach of the federal Department of Labour code. It would also cause breaches resulting in federal applications under the discriminatory provisions of the human rights criteria, for application by disgruntled employees who were not to receive contributions as designated in section 5a.

Again, through lack of skill and knowledge, there has been an inconsistency created in the designation of the proposed contributions that requires redress.

In dealing with the problems set out in subsection 45a(1) of the proposed act, you also have the problem that a worker is deemed to suffer future loss of earnings where the worker has incurred disability of a soft-tissue variety rather than a fixed and permanent disability.

It is a fiction to deem that a worker who has received benefits for 12 months now has in fact a future loss of earnings. This is an area that has been addressed in the state of Florida. There is a Governor's paper on compensation reform that is presently being put together; it was to have been published on February 28 but has still not been released.

I urge this committee to obtain a copy of the Florida Governor's report because the state of Florida is the only other true wage-loss jurisdiction in North America and I would think it would be important for you to see the problems the Florida wage-loss legislation has undergone, from a philosophical point of view as well as from a practical point of view. I urge you to obtain a copy of this material in your deliberations.

When we look at the problem of deeming wage loss to occur, you are creating an inequity that should not be allowed. The fiction of being disabled is one that is subject to medical proof. Merely to suggest that a worker receive benefits for a period of time does not assist in vocational rehabilitation, does not assist in return to work and does not assist in the mindset that goes with the return-to-work aspects of a worker who has been injured. The question is, was there real disability, and if so, what is that disability?

There is also a problem in subsection 54a(7), for the proposal states that "the board shall make the offer of an assessment within a reasonable time after the date the worker becomes medically able to undergo the assessment."

There is no time period. I suggest 30 days is a reasonable time period. You have many instances where the board is incapable of meeting the paper challenge and making any assessment on a timely basis. A worker can get lost in the system, and for that to happen we would lose the valuable services of an individual being returned to gainful employment and to productive life.

Therefore, it is suggested there be a mandatory time frame inserted within the legislation. I suggest 30 days. It could be 45 days or it could be 60 days, but I suggest it should not be left untouched. It should be subject to scrutiny and control, and such control should be equitable in terms of the nature of the type of time frame for the worker to be either assessed or to refuse assessment.

By not defining the time period, you lack the ability to control the ongoing absence from employment, the run-on claim and the loss of benefits. In this sense, the section lacks the checks and balances this government indicates it wishes to strive for as a measure of equitable application. As well, by absence of any check and balance, the function of the Workers' Compensation Board as being trustee for employers' contributions to the fund is not met.

In dealing with the question of what disability is, the proposed amendment is too broad. It really encourages one to enter into the area of an overall benefit systems rather than dealing with the workers' compensation area. When you look at the question of disability, you look at what is work-related.

There are a number of papers. Dr. Peter Barth wrote a paper for this government back in 1972 that exhaustively reviewed the issues of disability and the factors of what becomes work-related. In terms of present discussions, they are absent from the white paper material, but Dr. Barth is a leading expert in his area. The government thought enough of this paper to have it produced and it forms part of the ministry's records.

He talks of disability that arises in the course of employment. He talks of that disability as that which is subject to workers' compensation. He says that otherwise you engage in the realm of social welfare legislation and social welfare legislation is not workers' compensation. The mindset is very different when you want to reward a person regardless.

Professor Weiler has not been in tune with the current thoughts on workers' compensation, but he has been out to design an overall system that goes beyond workers' compensation. I do not think that is the mandate of this committee. We are looking at compensation reform in the area of an employer-financed system. If the government wants otherwise, it should be clear and say so up front.

It does not appear, therefore, that by inserting the criteria in clause 1(1)(g) of the act, "'disability,' in relation to an injured worker, means the loss of earning capacity of the worker that results from an injury"—that is a circuitous route to go down a path that leads to frustration and anger within the employer sector.

If you are looking at compensation, you look at three factors: (a) the injury, (b) whether the injury was related to the work being performed, and (c) if it was related to the work being performed, whether it arose out of the employment. That is the mindset. That is what the draftsmen did. Mr. Justice Roach commented on that extensively in his last royal commission report and

that is the amendment I suggest to you in this material should be corrected.

"Disability," as defined, is not a compensation goal. You have two compensation goals to consider in terms of what workers' compensation is about. The first is vocational rehabilitation. The second is support of the injured worker during the period of time he is disabled from his work-related injury. Anything less than that standard leads you down a path to areas that are not related to workers' compensation, but to social welfare.

In dealing with the other areas—pain and suffering—this is a very significant amendment to this act dealing with what Professor Weiler calls noneconomic loss. What you must realize is that legally, and many of you on this committee may be lawyers, when you talk about rewarding an individual for noneconomic loss, you talk about rewarding an individual for pain and suffering. Pain and suffering is not a compensation goal. Pain and suffering reflect loss of amenities and loss of expectation of life.

The leading case in the area for review by your legal scholars is Andrews versus Grand and Toy. It is an Alberta case. It is a 1978 Supreme Court of Canada decision. Mr. Justice Dickson talks about the fact that noneconomic loss reflects suffering of pain, is loss of an amenity and of a happy life at home. He does not talk of a life at work. He talks of a life at home. He says also, "To lose years of one's experience of life is to lose all amenities for the lost period." That is true.

However, the third area is the result: to cause mental pain and suffering. The board has a policy on mental pain. The Workers' Compensation Appeals Tribunal has gone to long lengths in the Villanucci decision to talk about mental pain. The whole area is up for grabs in terms of the corporate board's review of what is mental pain and what its criteria should be. But the mindset of noneconomic loss talks of court adjudication. It talks of a conflict between parties in a court framework, in a litigious framework. Compensation is no—

[Failure of sound system]

When you introduce a no-fault system, you take away the fight. You secure for the worker a benefit. There is no contest in the worker's entitlement to that benefit. Similarly, if you secure that benefit for the worker in accordance with the rules of what the worker is entitled to, you discount the worker's entitlement for the gross award of pain and suffering. That is the cap, you see, that has not been costed. That area belongs in a courtroom. It does not belong in the guise of workers' compensation.

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Mr. Chairman: Mr. Cronish, I know the members of the committee would be disappointed if there were not time at the conclusion of your remarks to have an exchange with you. I just hope you will keep that in mind.

Mr. Cronish: I have just two more pages. I will be quick.

In dealing with the area of further reform and conflict, section 45a talks of economic loss; subsection 54b(4) talks of a worker who has been denied the proposed return to work having the right to receive a benefit by way of a penalty. It may be that the worker will receive both the penalty and the benefit, and if he does, then the worker will be overcompensated.

The problem we get to is that you look at the nature of the future loss-of-earnings capacity under section 45a, which talks about a differential in terms of wages earned previously to wages to be earned to age 55. In subsection 54b(4) it says that if there is no reinstatement, the worker gets a percentage which is up to 90 per cent of his net average earnings plus payment for one year. You overcompensate the worker on that basis. That seems to me to be somewhat inequitable.

Looking at the other criteria, in dealing with the question of the financial impact, I understand that the Workers' Compensation Board presented to this committee in camera three costings of different sections of these proposals. I certainly would like to know if that is the case. I would like to know the figures if that is the case, because in dealing with the costing it is my information that it is not revenue neutral.

It is my understanding that the costs associated with Bill 162, until the regulations are produced, are not known. If you take the assumptions that are present, it could double the cost of workers' compensation in Ontario without very much difficulty. When you look at the criteria that were dealt with in terms of dealing with Bill 101, the government of the time promised that Bill 101 was merely to catch up, to index pensions to bring a fair evaluation to the present system and not much more.

However, as of 1985, the cost-nothing process did not work. The board's unfunded liability has now exceeded \$7 billion and continues to increase, and that certainly is costing something. The something is borne by employers because they must fund the cost of carrying this debt. The government of Ontario does not fund the Workers' Compensation Board debt. We, the employer class, do.

There are a number of areas in question in terms of what is fair and what is proper. I suggest to this committee that the bill, as it presently stands, should stand in abeyance pending a full and fair actuarial evaluation once the board produces the regulations for review and comment. If the act is going to cost twice the proposal of the minister—who says it will be cost-neutral—then that is a fair point on which the members of the employer community can make further representations to this government.

Until that cost is known, I think it is untoward and unfair to put blinkers on the employer community and say, "Accept this or else." I do not think this government has the mandate to prejudice future carrying on of business and future earnings capacity of workers in Ontario by being blindsided.

Professor Weiler's third report talks of dealing with certain areas of blended award systems and talks of noneconomic awards to offset wage-loss awards. It is not a dual award system as in Bill 162, and therefore the criteria or any reference to them are pedantic. It is not relevant to your adjudication or consideration of the issues.

In dealing with assessments on noneconomic loss, you need clarification as to what the anticipated likely future consequence of the worker's injury is. You need to clarify the concepts as to what wage-loss awards are based on. Are they based on projections or actual wages? In terms of noneconomic awards, certainly for any pension evaluation, the criteria set forth by the American Medical Association have to be standardized and made reproducible, much like Quebec has done.

Also on the question of awards to age 65, you have problems in terms of whether you are dealing with an actual wage loss or projected earnings. At page 6 of the submission, I suggest there is a multiplicity associated with a worker coming back and asking for more on at least five occasions with respect to the proposed noneconomic and economic loss awards. There is no provision made for reduction in the case of a worker improving or a worker cheating. The question of so-called disability has too many catch-alls to it that are not properly defined at this point.

Bill 162 does not present a closed system. It presents an open award system that is forever expansive and that poses problems as well. The question of a 10 per cent pension creates further problems. Certain workers engaged in employment may be overcompensated or undercompensated, depending upon whether they have a flat benefit plan or a final earning-type plan with respect to their pensions. Why should it be the employer who bears an additional burden in the guise of workers' compensation to surcharge a 10 per cent pension benefit?

In conclusion, I would like to add that the draftsmen of the act have failed to significantly consider issues of concern to both federally regulated and provincially regulated employers. The uncertainty associated with the Workers' Compensation Act amendment will foster litigation, unsettled conduct in the workplace and significant disincentive to employers to remain in business in Ontario.

Members of this committee, the decision is yours whether to scrap the within proposals and initiate a fresh review on an equitable basis, or to pursue the pathway to the courthouse door, to foster litigation between the worker community and employer representatives, or to drive employers out of the province to areas where there are more reasonable means to carry on business.

I will be pleased to answer your questions.

Mr. Chairman: I think we will have to limit the questions to one from each caucus because of the time. To put your mind at ease, there was no in camera meeting between the board and the committee in which costs were laid before the committee. That did not occur, period.

Mr. Tatham: Destroy incentive to go to work: I do not follow your comments there. Could you expand on that, please?

Mr. Cronish: By having a compensation benefit so high that it equals or exceeds the worker's wage he would otherwise earn destroys the worker's incentive to return to work. I will give you an example. You operate a punching press and you are a member of the Canadian Auto Workers. You make \$14.30 an hour. Your compensation benefit is \$453 a week as of the end of the year before the increase came through, or \$490 a week with the increase.

Based on a 35-hour week, you are earning approximately \$775; after tax you are earning more or less \$500. The difference between that and the compensation benefit of \$490, under the proposed bill going to a ceiling of \$40,000, is so little, why should I stand and operate my punch press for my 35 hours a week when I can receive just as much or almost as much from the Workers' Compensation Board?

Mr. Tatham: If the fellow is sick or hurt, he should get it. If he is not, he should go back to work.

Mr. Cronish: The question of "not" is the problem. There are insufficient controls on the "not" side of the coin. To deem a worker disabled is a very simple exercise and the cost of the disability expressed in the proposed amendment makes it even easier for a worker to say, "I am disabled and therefore not able to return to work." Whether the worker wants the job or not has never become a factor.

The criteria are that this whole area of pain and suffering with respect to what is work-related and what relates to a worker's mindset in terms of his social background has not been well-explored. Workers do not like to return to jobs with which they are unhappy.

Mrs. Marland: I want to make the point the chairman made, that the committee has not met in camera with any parties to this bill whatsoever, either the ministry, the WCB or the other interested parties.

I do not see any reference in your brief about who you are representing or who has paid for this brief. Obviously, you have done a wonderful, professional and thorough presentation here, and I am wondering whether you are here on behalf of your own practice or whether I have missed who it is you are representing.

Mr. Cronish: I think you came late.

Mrs. Marland: Yes, I did.

Mr. Cronish: I indicated to the chairman at the very outset that I act on behalf of the Mechanical Contractors' Association of Ontario and Toronto, the Canadian Shipping Association, Reinforcing Steel Association and several municipal employers including cities, towns, villages and hospitals, as well as private-sector employers engaged in all areas of manufacturing and transportation.

Mrs. Marland: It is not in your brief. You added that when you started. Thank you. I was late.

Mr. Dietsch: May I have a supplementary to that, for clarification's sake? The groups you just outlined are supporting the brief you presented?

Mr. Cronish: Yes, they are.

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Mr. Philip: I am tempted to ask you a question about your second-to-last statement. It paints a picture that somehow, as a result of this bill, companies are going to be lined up at the Manitoba border headed west. But I will restrain that temptation and go to number—

Mr. Cronish: Mr. Laughren did not restrain himself last time. You should have every opportunity to question me as you wish.

Mr. Chairman: I do not recall that.

Mr. Philip: I would like to ask you about your first paragraph on page 2. You are a representative of some employer groups. Most employers appearing before this committee and indeed other committees that have dealt with workers' compensation have always made the point that the purpose of workers' compensation in their view is to meet an injured worker's economic

loss. My question to you is this: How can you meet an economic loss if you only want to pay 80 per cent of the gross wages that person was earning?

Mr. Cronish: We are not dealing with a full income replacement system. If you want to deal with a full income replacement system, I can give you a couple of books out of Oxbridge dated 1933-34, written by three or four different authors, that would support your theory. Compensation is an offset to return-to-work considerations. It is not a full support system; it was never designed to be a full support system. It was designed to provide a worker a reasonable basis. Eighty per cent of gross earnings would be reasonable and would provide some latitude for return to work; 90 per cent net is a disincentive to return to work, based on available statistics.

I know Mr. McDonald from the Workers' Compensation Board is behind me. He can tell you that we carry perhaps 3,000 or 4,000 files. Many of these files get resolved at the time the worker returns to work because the employer makes the job available to the worker. We encourage our employer community to make jobs available to work a worker back into a regular position. You start off first with light duties.

If you want to look at decision 240 of the tribunal—it was my decision—it was a case where the employer did make alternative duties available for the worker very quickly after knowing the worker's disability. Not everybody is permanently disabled the time they first have a soft-tissue injury. That is the fiction this committee may not understand. There is a lack of good sense in terms of what jobs one is capable of as against deeming somebody totally disabled. That is where we fall down. If we are looking at deeming a person totally disabled every time he has an injury, we will have no employers in Ontario because nobody can afford that type of system.

If you look at what is reasonable in terms of short-term interim wage support—80 per cent of gross is certainly reasonable—you will have the opportunity for both the worker and the employer to engage in viable discussions with the worker's doctor about what type of support the employer can give to the worker to encourage light duty, to encourage return to work. I stand for the principle of return to work through employer-assisted rehabilitation programs. That is critical to any compensation system.

Mr. Philip: I am sure the landlord and mortgage company would appreciate that the worker is only going to pay 80 per cent of his mortgage or 80 per cent of his rent. But let me ask you—

Mr. Cronish: I do not know what your point has to do with that. Compensation is not assignable.

Mr. Philip: Let me ask you a question. Sir, I am asking you a question. Would you be kind enough to—

Mr. Cronish: Well, be fair in your statement then. Compensation is not assignable—

Mr. Philip: I have listened to you, sir. Would you be polite enough to listen to me when I am asking you a question?

Mr. Cronish: Yes. Please go ahead.

Mr. Philip: Would you agree that in the paragraph in question you are in fact suggesting that employees are malingerers, that they will not

return to work if they are offered 90 per cent of gross earnings? As someone who comes from a management training background, I know of no literature on motivation that suggests that is true. I ask if you can produce any literature that will suggest that by paying somebody 80 per cent, somehow he is going to return to work or be more motivated to return to work than if you pay him 90 per cent.

Mr. Cronish: I can suggest to you that there are studies that suggest people do in fact malingering or have post-traumatic syndromes and refuse to return to work, and the financial aspect is one incentive of the consideration. I can produce this literature for the committee. I cannot produce specific literature dealing with the difference between 90 per cent and 80 per cent of gross, but there is statistical information I can produce and would be happy to do so.

Mr. Chairman: Mr. Cronish, thank you for your appearance before the committee.

Mr. Philip: Is bullshit an unparliamentary word?

Mr. Chairman: Yes.

Mr. Philip: Then I will not use it.

Mr. Chairman: The next presentation is from the Ontario Mining Association. Gentlemen, welcome to the committee. I hope you will introduce yourselves and your colleagues.

ONTARIO MINING ASSOCIATION

Mr. Pirie: My name is Jim Pirie. I am with Noranda Minerals Inc. and I have previously been chairman of the OMA's workers' compensation committee. On my left is John Blogg and on my right is Bruce Campbell, both employees of the Ontario Mining Association. In the audience is Patrick Reid, the president, and Andy Rickaby, the new chairman of the Ontario Mining Association.

It gives us great pleasure on behalf of the Ontario Mining Association and its 48 member companies to be here and we appreciate the opportunity to present our comments on the proposed amendments to the Workers' Compensation Act as described in Bill 162.

I do not propose to go through this word by word, but would prefer to take a few minutes and hit the highlights from our perspective.

We, as an association, have been on record for several years requesting a workers' compensation system that provides fairer treatment to workers and to employers. We believe this bill represents a step in the right direction as part of the ongoing process of improving this particular piece of legislation.

However, we are concerned about trends in the WCB system and we will speak a little about them. This is not the first time we have had the opportunity to express our concerns. We have appeared before this committee on previous occasions, and on one of those previous occasions—I believe it was a couple of years ago—we introduced the concept of a comprehensive disability insurance plan funded equitably by all the parties concerned.

Since we made those statements, some people have taken it out of context

somewhat and said we endorsed it completely. If you recall, Mr. Chairman, our subsequent discussion tried to address that. We think the concept merits one heck of a lot of study. That was the point, that we thought it merited study. That is just to set the record straight on that, I am sure to nobody's surprise.

Also attached to this brief are appendix 1, a list of our member companies, and appendix 2, a statement of workers' compensation principles that has been developed by our association.

The amendments proposed in Bill 162 are seen overall as recognition of many of the points we have made in the past and therefore the mining industry is in general agreement with the thrust of this bill. We really do think it is a step towards ongoing improvement of the existing legislation. We do want to point out, though, before making specific comments on details of the bill, that we still think the WCB system warrants a great deal of employer concern. I refer to the charts on the following pages, which I am sure you have all seen before, but we think they are very significant to us.

I will back up a minute here. Schedule 1 employers essentially have held the claims frequency rate flat. I think the chart indicates that. The chart on the right side indicates that the assessment revenue to the board, which is in fact the premium cost to employers, does not reflect the same flatness that our injury prevention performance indicates.

The bottom two charts are specific to class 5, the mining industry. They also show that we have enjoyed some success in the reduction of claims frequency, and the industry costs on the right-hand side continue, from our point of view, to go in the wrong direction.

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If you turn the page, we now look at the statistics we are most comfortable with, statistics put out by the Mines Accident Prevention Association of Ontario, MAPAO. We are concerned there with the lost-time injury frequency; you notice there is quite a dramatic improvement in the performance of the class 5 employers. On the right-hand side the assessment revenue, which again is the premium cost to employers, to some extent is almost a mirror image. It is increasing tremendously.

Looking at the details in appendix 3 to this brief, there is the Employers' Council on Workers' Compensation document. I understand they have not appeared in front of this committee yet, but this document has been presented to the minister and really is an intensive examination of the language of the bill. We do not want to take a lot of time with this now, but we urge you to go through that particular document, our appendix 3, and address the issues it raises in terms of language. We do that on the basis that this legislation should be clear to all parties. We suggest there might be some language revisions to clarify points.

The board, from our perspective, has made a good initiative, has initiated a good concept in terms of its policy review committee, chaired by Irwin Glasberg, executive director of the policy and program development department. We have only had the initial meeting with this group, but we think it is an initiative that is well worth pursuing and we hope it will attain a significant role in developing policies and practices that will meet the intent of this legislative reform.

We now go to one of our most favourite topics, early intervention for rehabilitation. Some of you will recall that this association appeared in front of the Ontario Task Force on the Vocational Rehabilitation Services of the Workers' Compensation Board. I have the brief with me; some of you might recognize it. It was presented in Thunder Bay on October 20, 1986. We were one of the very first presenters and it spelled out, in no uncertain terms, our support for early rehabilitation.

Our sense of early rehabilitation indicates that all the parties have to be involved in early rehabilitation, with early intervention the keystone here. The board, the injured worker, the treating physician and the employer have very important roles to play in developing a suitable vocational rehabilitation program. The brief went on to point out that if you cannot work this out with the immediate employer, all parties then have to launch into working with the community in order to get people back to work and protect their purchasing power just as early as possible.

Our submission was made to the task force on vocational rehabilitation. We urge you to look at it. Early intervention is definitely the key.

There is one aspect there that bridges nicely into the next issue. Our own experience with soft-tissue injuries, such as low back pain and other soft-tissue injuries, is that they are very difficult to deal with, but we think the solution belongs with proper injury management procedures beginning on the day of the injury. If something is broken, and those things do happen, then the time frame required for return to work is much more defined, but when you get into soft-tissue injuries, the strains and sprains, they are the tough ones to deal with. The process just has to start on the day of the injury with all the parties.

To that end, we note the proposed language for subsection 54a(5) and suggest it would be strengthened by the following change. Our suggestion is there. We would really like to see the 45-day provision, when the current language says the process would start, as the outer limit. The process just has to start before that. We recognize that 45 days is a dramatic step in the right direction, but it really should go further, especially with the soft-tissue injuries. On the day of the injury everybody should get to work on it.

When it comes to the pension fund, we believe it should be integrated. It is a very important part of the overall picture. The increase in benefits and earnings ceilings of course is of concern to us because we are, as a class 5 industry, high payers, so 75 per cent of average industrial wage is going to cause us concern. Our concern really is about the short time frame, almost an overnight implementation. We would like to see it phased in over three years. It is significant to us, being high payers. Please keep in mind that also significant to us is that our assessment costs have doubled in the same period that our accident rate has halved. This is a concern.

On the dual award system, the language of the current bill leads us—we are not too sure if we have a complete and clear understanding of the intent, and that is why we refer you to the appendix. But our understanding is that those who need it most have their purchasing power better protected by this system.

On reinstatement, we believe the proposed section 54b requires an employer to re-employ an injured worker in his or her original job or to find suitable alternative work under special circumstances. The proposed language

makes no reference to the degree of recovery of the injured worker, whether a reinstatement is triggered by the request of the worker or by medical assessment, whether there is an onus on the worker in terms of rehabilitative effort or what happens if the worker's job has disappeared, as in a plant shutdown.

What would happen, for example, if a diamond driller working in a crew of five were injured and disabled for six months, during which time the job was completed? He would have no job to be reinstated to, unless he were able to bump someone off another crew on a different job. We suggest that subsection 54b(6) be amended to read:

"For the purposes of this section, the board shall determine whether the employer has met the employer's obligation under this section,

"(i) upon receipt of an application from the aggrieved worker,

"(ii) after obtaining the position of the employer, and

"(iii) determining that a suitable job is reasonably available."

In conclusion, the Ontario Mining Association believes that management, government, labour unions, the Workers' Compensation Board and injured workers have to make a co-operative effort to reduce the economic impact of an injury. The objective must be to return the injured worker to meaningful employment, using the tools of early intervention, physical and vocational rehabilitation, modifications of the workplace and modifications of labour practices such as seniority and jurisdiction.

The costs of such an effort must be absorbed by the compensation system, which already has costs going out of control. This means that unless radical changes to the method of funding the system are made, compensation for noneconomic loss, for injuries and diseases caused or complicated by lifestyle, and for income significantly in excess of the annual industrial wage will put an unbearable burden on companies operating in a competitive environment.

Mr. Chairman: Thank you, Mr. Pirie. Just for the record, I plead guilty to suggesting that the Ontario Mining Association endorsed the universal disability program, but I must say I agree with you that there should be a very serious study done before it is implemented. I would even like to have a royal commission. We are still in the same ballpark, Mr. Pirie.

Mr. Pirie: The fences are a little different.

Mr. Carrothers: I am wondering if I could go back to your comments on noneconomic loss. I am curious whether you could expand on that. Granted that this act is sort of providing a formula for this, it is fairly mechanistic. Of course, noneconomic loss is a very subjective thing. You are dealing with pain and suffering and it is pretty hard to quantify that.

This seems a pretty straightforward and simple scheme. I wonder if that in itself does not have some merit, having a simple way one can arrive at that loss rather than getting into all the subjective criteria or the subjective considerations that one might if one were trying to establish a number for each individual. I am wondering if you might expand on how you would see this working, another way to do it than as set out in this piece of legislation.

1120

Mr. Pirie: We do know it has to be simple; otherwise it would be almost impossible both to understand and administer.

Mr. Blogg: Our impression is that this bill is certainly taking a step in the right direction. We have a problem in the mining industry which relates to the history of mining. We are unfortunately now reaping in cost what we sowed a number of years ago, sometimes a very large number of years ago. Quite often the employers who did the sowing are not around to do the—I am getting stuck on my biblical quotations here. It is very difficult.

Let me give you an example. A miner who used to use a hand-held drill now can suffer from a disease called white-hand syndrome. There is a more scientific term for it than that. It is not necessarily a disease that disables him; he can continue to drill. It is just that in the wintertime his fingers get cold. The board will allow a pension for that. He has no loss of earnings; he gets a pension for loss of enjoyment, if you can say that warm hands in the winter are an enjoyment.

Hearing loss is a similar thing. The miner may not be able to hear rock and roll music now. I am not sure about the degree of enjoyment he is losing there either. I am being facetious on a serious matter. He gets a pension for that.

There are a number of ways a miner can get a pension. We have cases, and admittedly they are extreme, where the miner may get 30 per cent, 40 per cent or 45 per cent accumulating a number of these small loss-of-enjoyment pensions and yet is still working in the mine and still making, if he is an expert miner, possibly \$70,000 or \$80,000 a year.

Mrs. Marland: Where is that?

Mr. Blogg: As a matter of fact, Mrs. Marland, you saw a number of them last year on your tour.

Mrs. Marland: I asked them and the top I talked to was \$50,000.

Mr. Blogg: They were probably embarrassed. We certainly have miners who do not quote this year's wages; they quote them from four years ago, for the very fact that they figure if they tell too many people, something will happen to it. They do not want particularly the federal government to know about it.

I think that is the point we are trying to make here, putting a cap on these loss-of-enjoyment payments.

Mr. Chairman: Perhaps there should be a spousal award for cold hands.

Mr. Blogg: I do not think I am going to comment on that.

Mr. Carrothers: So your concern is not so much the mechanism that might be used to quantify the award; it is that if one accumulated a number, you think there might be some compensation that was not necessary there, so you want a cap. Is that really it, more than the mechanism of assessment?

Mr. Blogg: I think the idea of a reasonable lump sum payment in acknowledgement of loss of enjoyment is probably a good way to go.

Mr. Carrothers: I think, for instance, Quebec has this type of system. Obviously, some of your members are going to be operating mines in Quebec. Has it produced a problem for you there?

Mr. Blogg: I do not know of any. Do you know, Mr. Pirie?

Mr. Pirie: We operate a number of mines in Quebec, obviously. Just off the top of my head here today, and it is getting easier to do these days, I do not recall that we have had a problem with it. We do not have a lot of experience with it in that province. My recollection is that it has not been around that long.

Mr. Carrothers: You are not aware of a problem having developed from this type of system? I think their system is similar to this. I have been told it is patterned after theirs, and if there is a problem, it should be producing it within their mines as well.

Mr. Pirie: Sitting here today, I am not aware of a problem.

Mr. Tatham: If I could just interject, we did develop some numbers two or three years ago comparing compensation costs in the mining industry across the country. Our assessment rates were substantially higher than in most of the other provinces, I think all of the other provinces. I think we were the worst in the country.

Miss Martel: If I can just carry on on that section, I notice you listed a number of concerns you have in terms of a physician determining likely future consequences or results of an injury. You said there should be some specific regulations in this regard. I am wondering if you can give the committee some idea of what you mean. I am looking at this section under the dual award system, but continuing on the top of the next page.

Mr. Blogg: I think the point we were trying to make here is that physicians need some kind of guidelines, so that there is some kind of consistency. We do not see this as a lottery where you pick the right doctor and you win and you pick the wrong doctor and you lose. One of the facts in the mining industry certainly is that doctors are isolated. We are hoping that there will be some kind of consistency across the province.

Miss Martel: Would you be suggesting any time limits? We had one employers' group that suggested five years would be the maximum amount of time where you could determine unanticipated deterioration. I am wondering if that is the line you are heading along.

Mr. Blogg: I think we are getting outside our area of expertise in this, making that kind of judgement.

Miss Martel: So you are just concerned more that each doctor is looking at the same set of guidelines in terms of a rating and the percentage attached to that rating, not so much deadlines after which time a worker cannot be assessed. I just want to make that clear.

Mr. Blogg: Frankly, this is not an area we have given a lot of thought to.

Miss Martel: I appreciate that.

We have had a number of groups that have come before us and have been a

little bit provocative in talking about overcompensated workers and then had no statistics to back that statement up. I am wondering if your industry can provide us with some figures, either company by company or industry-wide, about how many workers do go back to work and have a pension over and above what their regular earnings are.

Mr. Blogg: We have those numbers, do we not?

Mr. Pirie: I think in preparing for our submission to the task force we had numbers that indicate, I believe, that 96 per cent or 97 per cent of our people who are injured do return to work. I do not know that we have the numbers—what was the second part of your question?

Miss Martel: The reference had been that they returned to work at their regular wages and then received a pension over and above that, so then they were classified as overcompensated workers. A few of the employer groups have come before us and talked about that but did not have any figures showing just how many of the workers did indeed return to their regular employ and then received a pension over and above that. I am wondering if you have a breakdown like that across your industry. You may not. I am just curious.

Mr. Pirie: I do not know that we have broken it down that way. In preparing for the task force, we were trying to find out just what we were doing in the field, and that number of 96 per cent or 97 per cent came out of our system at that time in terms of people returning to work with us.

Mr. Blogg: We have some numbers for individual companies that have been provided. Unfortunately, I did not bring them with me, but we can see if we can work something up for you. The numbers I am recalling from memory are stunning, to say the least. We are not talking about two per cent, five per cent, 10 per cent, 20 per cent; we are talking—and I do not want to give a number just out of my head, but I know it was a stunning number that I saw.

Mr. Chairman: For the final question, Mr. McGuigan.

Mr. McGuigan: I am interested in your comments about people with soft-tissue injuries. Not being a medical person, I would think these are things that you cannot verify by an X-ray. In other words, you do not show a bone injury or a disc injury; it is to muscle tissue and it is hard to identify.

You say the rehabilitation or the treatment process should begin immediately. As I understand it, most doctors, regardless of the injury, when you come to them will say, "Take a week off." That is sort of the standard. I just wonder if you can expand for us and tell us a little bit more about treatment and what concerns you have on that.

1130

Mr. Pirie: Maybe, from my point of view, the word is not "treatment" so much as "education" of all our employees, including our own staff. If somebody comes in with a sore back, a strain or a sprain, we know that these are the most complex issues to deal with in terms of the longer you are off, the tougher it is to get back. In the past, we have been guilty of—I hate to use the word—forgetting about these people. They have stayed away from work, and we have not paid any attention to them.

I think you introduce a whole other dimension as part of what I guess

you could call treatment. If we start to pay attention to these people and try to explain to them, through nurses and the medical profession, what they might expect because they are dealing with a strain and a sprain, if we can remove a lot of the fears and uncertainties, people can get back into the rhythm of work and we can phase them back in properly without their just sitting out there and being forgotten about.

As soon as you see a strain, sprain, sore low back, whatever, that should flag everybody's attention that perhaps we are talking more of counselling and paying attention and care, if those are parts of treatment, rather than just forgetting about them. For our own company, we have done too much forgetting in the past. We have been trying in the last couple of years and have made dramatic improvements in integrating this as part of proper injury management, using strains and sprains as a trigger to get involved with the employee.

Mr. McGuigan: So it is really more of a consultative process than, say, a prescribed treatment? You might say, "Do certain exercises" or "Do certain things." You are more concerned about consultation than you are about---

Mr. Pirie: Yes, I think the prescribed treatment might come after working with the medical practitioner, but in the initial stages we would try, with the employees, to anticipate what they might expect in terms of pain and suffering because of a soft-tissue injury.

Mr. Chairman: Mr. Pirie, Mr. Blogg, Mr. Campbell, thank you very much for coming before the committee and for bringing Mr. Reid with you and teaching him how the system works around here. We appreciate your presentation.

The next presentation is from the Employers' Advocacy Council. I believe Mr. Wadsworth and Mr. Campbell are here representing them. Welcome, gentlemen. After you have introduced yourselves, I wonder if you would give some of us an explanation of the difference between the Employers' Advocacy Council and the Employers' Council on Workers' Compensation. Tell us the difference.

EMPLOYERS' ADVOCACY COUNCIL

Mr. Wadsworth: We would certainly be pleased to. First of all, I am Peter Wadsworth and I am the policy chairman for the Employers' Advocacy Council. Beside me is Keith Campbell who is treasurer for the Toronto chapter of the Employers' Advocacy Council.

What I will do is just go through the first page, which breaks out the representation structure of the EAC, and that may provide some better clarification on the differences between the EAC and the ECWC. The EAC presently covers in excess of 600 employers, both large and small, with over 50,000 employees around Ontario. We have specific chapters operating in Kitchener-Waterloo, Windsor, Cambridge, Chatham, Hamilton, Owen Sound, Sudbury and Toronto and we are still looking towards further expanding that network.

We deal with practitioners at the workers' compensation level as representatives of their companies, as opposed to the ECWC which tends to represent, as far as we understand, large associations of employers. We tend to get down to the practitioner level and deal with what issues practitioners for companies are facing in workers' compensation, trying to bring any concerns we have in workers' compensation for our employers to the Workers' Compensation Board, the Ministry of Labour or committees such as yours.

Mr. Chairman: You do not do appeals?

Mr. Wadsworth: On an individual basis, practitioners might be taking appeals to the Workers' Compensation Board or the Workers' Compensation Appeals Tribunal, but the association per se does not represent other employers before any of those forums.

One of the things I would like to point out in our presentation is that we are going to be concentrating on two areas: the pension awards for noneconomic loss and the wage-loss benefit, which is the future loss of earnings, the deeming concept.

On page 2, there has been an addition under section 2, you will note, "Future Loss of Retirement Income." I understand that our Peterborough chapter, at a later date, is going to be making a submission in that area, so I will decline to make any comments on that future loss of retirement income.

One of the first comments we would like to make is that the Employers' Advocacy Council generally supports the intent and philosophy underlying the proposed amendments. We also believe that the existing system of workers' compensation in Ontario is not properly allocating financial resources to those workers who have suffered work-related injuries and illnesses.

One of the things we note here is that perhaps the shift and the dual award concept will resolve some of the injured workers' concerns regarding the allocation of these resources such that, whether one is dealing with issues of overcompensation or undercompensation, the existing resources can be allocated to meet the needs of both parties where those needs exist.

One of the things that brought a small number of employers to get involved in the workers' compensation area first of all, I think, is that historically employers recognized the financial cost associated with accidents. They also recognized their liabilities under workers' compensation legislation and they felt that there was an agency in place that would take care of injured workers in a reasonable fashion.

As such, outside of any safety obligations they had, employers merely were required to complete those form 7s, so to speak, and send them into the Workers' Compensation Board. The Workers' Compensation Board would take care of the process until such time as the employee was ready to return to work and at that point the WCB would advise the employer.

In reality, what we found is that the communication system may not always be that strong. We are now recognizing that should someone be off on workers' compensation, the employer may have to be more involved in the day-to-day follow-up, both with the employee and with the Workers' Compensation Board, to find out the ongoing status of the employee.

That may not generate a real concern to the employer, but it is an indication of the financial consequences which have arisen from workers' compensation that employers now must spend an additional amount of effort in dealing with workers' compensation issues, which perhaps they had not done in the past.

One of the reasons for this is perhaps—I do not want to deal with taking years out of context and I am sure you folks have information from the WCB on the financial statistics, the injury statistics dealing with these areas, but if we look at 1975, the WCB awarded \$58 million in pensions. If you look at that ballpark figure, that is difficult to really grasp. What our concern is, at least what was brought to our attention, is that the

capitalized value in 1988 paid out by the board for the same amount was \$650 million. We recognize that there is an \$8.2-billion deficit in this province and we are not sure who is going to pay for it.

Mr. Chairman: That is the WCB deficit?

Mr. Wadsworth: That is correct. Granted, I cannot speak for Ontario's deficit. Obviously, as employers—and we recognize that the workers' compensation plan is intended to be borne by employer assessments and employer assessments alone—we are concerned about who is going to be paying for this deficit.

With economic restructuring and plant closings, those debts are further borne into the fund, requiring a further reallocation to existing employers. We are not suggesting that employers ought not to provide reasonable compensation for any injuries or illnesses that arise out of the course of their employment; the question is merely to ensure that the system is in fact working well, so to speak. That is our role here today.

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We have seen one of the issues increasing over the years, and if we look back at 1975, it looks somewhat consistent. In 1975, 6,000 new pensions were awarded by the Workers' Compensation Board; in 1985, 10,000 additional new pensions were awarded. Perhaps if you go back to the Workers' Compensation Board and ask for statistics on 1987 and 1988, you will find that the additional new pensions awarded in both those years have probably increased as well. This may be as a result of medical changes, recognition of issues such as chronic pain and further soft-tissue pension issues that, historically, the workers' compensation system had not seen. It was trauma-related injuries—the broken legs and amputations—which were quite clearly recognized by workers' compensation.

The question we ask is, are all these pensions work-related? If they are not work-related, we have a real concern. We have a concern that we have got a deficit that is building. The Legislature is suggesting to us that we are required to pay for non-work-related injuries, and we are not sure just what the position or the thrust of the province is in this area. That is where we seek some clarification that the bill does not speak of.

We listened to some of the presentations this morning, and one of the things we would like to note, in regard to the noneconomic pension award, is that we support the inherent fairness of providing a reasonable financial compensation to workers who have suffered a permanent disability caused by a workplace accident or illness for noneconomic losses such as the future effect on their personal lifestyle, loss of enjoyment, etc.

We recognize that some other employer groups may not recognize that this is a reasonable system but, in fairness to our members, we believe that if someone loses an arm or a leg, there should be some consideration here for loss of enjoyment. We recognize that historically that has already been taken into consideration by the lifetime pension. We believe that it should be continued on and we believe this is one of the strengths of the bill.

To this end, we support both the formula for calculating the award and the proposed use of the American Medical Association's guides for the evaluation of permanent impairment, the reason being that even we recognize that the 1972 Ontario rating schedule is perhaps a little bit outdated and calls for a significant judgement on the part of the medical profession.

Having said that, we are concerned that there is the potential that the bill does not address, in regard to stacking of pension awards. Historically, the board policy with respect to stacking of pension awards suggested that workers' compensation is intended to provide compensation to employees who are disabled from working. Our rationale would be, how could a system provide for an employee or worker receiving more funding than his pre-injury earnings?

That is where we have a difficult situation. We are wondering, do you create some incentive for someone to say, "Okay, if I get \$5,000 for each finger, there is an opportunity here of making money"? In its strangest sense, in its thwarted or perverse scenario, the philosophy of that approach just seems to disagree with us, if you are going to be consistent. So, if you look, we have recommended an amendment, a clause 45(4)(b), which we would ask the committee to consider.

One of the other areas that we note is silent in the bill is that, presently, employers receive reports of medical assessments. In some situations this basically helps employers understand the costs associated with some of these pensions, and in some situations it necessitates appeals under the Workers' Compensation Board or the Workers' Compensation Appeals Tribunal.

Clause 45(7)(a) suggests to us that employers will not have access to that information. It further suggests, that being the case, it is going to be more difficult for an employer to formulate meaningful work when he does not know what the problem is with the employee, he does not know what his status is; and for an employer who is challenging the validity of a claim, it is probably going to mean he is going to have to go through appeal hearings through the WCB up to WCAT in order to get that information, not directly from that assessment but probably through secondary information.

We suggest that in order to make it easier for everyone to get that information and to clarify issues, as opposed to increasing the adversarial nature of the system, the committee might look at adding "and the employer" after the word "worker" in clause 45(7)(a).

We are very pleased that the Minister of Labour (Mr. Sorbara) came forward with some amendments to the bill, particularly with regard to access for WCAT issues. The concern that we have is the credibility of the system, whether it be access to WCAT by the worker or the employer. We understood that WCAT was developed to ensure that a nonarbitrary appeal system was working. If you deny either the employer or the worker access to those areas, you throw it back into the board and you take us back to five or 10 years ago, when both communities could have been concerned about what subjective decisions were being made at the WCB.

We are very pleased that this amendment was made by the minister. We support it, as we support the other amendment to subsection 45(4), to permit workers the privilege of using WCB doctors or, in the alternative, a doctor selected from a roster of physicians.

One area we would like the board to consider also involves the fairness of subsection 45(13), which deals with the significant deterioration of condition. While we believe conditions may normally deteriorate with time, some conditions, no matter how small, have been known to significantly improve with time. We believe that fairness would suggest that the employer would also have access for review in situations where there appears to have been a significant improvement, and we ask that the committee give that particular amendment some consideration.

In regard to the wage-loss benefit, we believe that the 90 per cent net earnings is reasonable. It is a fair system to both employers and workers. We note that it will apply only to those workers who remain incapable of performing pre-accident work and suffer wage loss. That is what we always understood workers' compensation was for: If you cannot work, there is a system here that provides moneys. If you can work, there is a question of, "What have you lost?"

The concern we have, as an employer group, is that we have people with \$40,000 or \$50,000 pensions doing the same job they were actually injured on. Unfortunately, we do not have any statistics on this, but the reality of the situation is that this is occurring. It is a real frustration for employers to be able to say there is someone over here who, on a soft-tissue injury, has been assessed an impairment of 15 per cent to 25 per cent, bringing about a pension of 40 per cent to 60 per cent, and he is doing the same job as everyone else. We just do not believe that is fair, and that is one of the reasons why we support the thrust of this bill.

We recognize this is outside the bill itself, but we would like to touch on the issue of causation, particularly as it deals with soft-tissue injuries. Presently, the Workers' Compensation Board administers the second injury and enhancement fund, and we understand that the intent of this fund is, where a prior disability caused or contributed to the compensable accident, employers will not be charged all or part of the costs in recognition that their employment environment was not responsible for the full extent of a worker's disability.

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What happens is a worker is injured in the course of our employment; for example, a back injury. He claims workers' compensation. Workers' compensation is awarded and it is found out that the injury had previously occurred with another employer. Those funds are channelled back to the previous employer. My employee, for example, is given financial relief, and those costs then are channelled throughout in a separate fund and channelled back to all employers in Ontario.

The concern we have now is that in some situations with soft-tissue injury, particularly back injuries, we have some people who may have had a back injury from a sports injury, a car accident, any number of situations, coming into the workplace. The second injury and enhancement fund would suggest that if you are injured in the workplace, while the immediate employer is given a financial break, all other employers would be required to pay for a noncompensable percentage of that award.

We particularly do not believe that is fair. We believe that if it is the position of Ontario society and the Legislature that Ontario employers should be required, through the SIEF, to pay for non-work-related injuries, moneys out of the general tax revenue fund should be forwarded into the SIEF on a percentage basis.

We create a scenario out here, and we believe it is a realistic scenario, because it is a situation that we have dealt with before. I would just like to end off with it.

This is the problem that we find under the funding scenario. Assume a worker applies to perform an unskilled and moderately manually heavy job with an employer and, unknown to the employer, the candidate for employment has

either a history of back problems or chronic pain relating to a sports injury, an automobile accident, etc. Let us also assume that the worker is functionally illiterate in the English language and is approximately 35 years of age.

Presently, under existing human rights legislation, employers must be cautious in inquiring into the area of a candidate's physical handicaps, if any, and rightfully so. However, where the essential duties of the position require the physical ability of the worker, the employer will often ask the worker if he or she has any physical restrictions in performing such work that the employer should take into consideration.

In most circumstances, employers will be advised that no physical problems exist. Should the worker be the most qualified candidate, the employer may require—but because of cost often does not—the candidate, upon receiving a written offer of conditional employment, to undergo a physical examination.

Unless the problem is detectable by X-ray or the candidate discloses such information to the treating physician, on the basis of the subjective information provided by the candidate, the employer will normally clear the employee to perform the manual aspects of the job.

The employee is now working. Let's present the element of injury. Some time later, while at work, the employee experiences pain and advises the employer that he or she is unable to perform his or her work. In many circumstances, the worker will advise the treating physician that the employee injured himself at work. The worker will lay off from work and, by means of the treating physician's report, a claim will be established at the Workers' Compensation Board.

Should the worker's previous medical condition have been even slightly aggravated by his work, his claim will be presently recognized by awarding him 90 per cent of his net wages for any time lost after the first day of accident and may be later assessed for a lifetime permanent partial disability. Fortunately, the WCB does not expect the accident employer to pick up the non-work-related costs. Those costs are charged to the SIEF, but those costs again are charged back to the employers.

We see this again in chronic pain, some tendinitis situations and a lot of soft-tissue issues in regard to back pain.

The following are some of the other changes that we suggest. Obviously, we do not have the benefit of reviewing WCB regulations with regard to definitions of "future loss of earnings" and "suitable and available employment," but we have two specific areas in our brief that we ask the committee to review. One is the area of illiteracy in Ontario, particularly the 24 per cent that was recognized, or at least suggested, by the Minister of Skills Development (Mr. Curling) in October 1988.

The second aspect deals with consideration as to the consequences that an economic downturn might occur and how those amendments impact on that. What are the employers' responsibilities? How do we create situations? Is there a financial incentive for people to thwart the system and use layoff provisions or use workers' compensation as a means of avoiding a layoff?

In our view, and we do not have statistics, that situation occurred in

1981-82 and we believe the same thing would occur on the basis of the bill as put forward should that occur again.

Mr. Carrothers: I wonder if I could just make a comment on your discussion of the increase in pensions that seems to have gone on in the last 10 or 15 years. Maybe my comment will be as anecdotal as yours, since you do not seem to have statistics.

It seems to me, at least from observing my community and the kinds of claims I see, that we had an expansion of factories in the late 1950s and early 1960s, some 20 to 25 years ago, quite an extensive expansion. Those factories took on staff. I am seeing, in my office anyway, people coming in with injuries—soft-tissue injuries as you say—resulting in aggravation of conditions we all have that are the result of 20 or 25 years on the assembly line, say at an auto plant or whatever. I wonder if the problem is not as much the fact of the general ageing of our population, the general ageing of our workforce, and just the impact of being on the line for 20 years and we are just seeing an escalation in claims.

I was curious. You do not have statistics, but could you give us anything? You must have something available that would substantiate what you are saying, because it is a fairly serious question and I would certainly like to get a better understanding of it.

Mr. Wadsworth: I think it is an important question to ask, particularly as we deal with what they term wear and tear types of injuries. We recognize, and I think there has been some clarification through the Workers' Compensation Appeals Tribunal in this area, that perhaps the Workers' Compensation Board had not addressed on a regular basis the wear and tear types of aspects.

We would suggest we are probably going to find more wear and tear exercises in somebody who is using a jackhammer or someone who is breaking things or flipping things on a regular basis. What then becomes the problem is, what per cent of human deterioration carries in through that, and if somebody has that wear and tear on the job, is any of that physical deterioration taken into consideration?

We understand in hearing claims that physical deterioration by means of age is taken into consideration, with a five per cent decrease as we go through, but we are not aware of any other areas, for example the soft-tissue injuries, and whether there is any medical evidence that suggests that as you get older your back may get weaker and things of that nature. We are not familiar on the medical aspects but just on the industry's.

Mr. Carrothers: Perhaps I can comment and then I have another question, it is my understanding that we all have deteriorating backs and that the symptoms come out at different stages; it is a very subjective thing to the individual. If we were checked out, every one of us in this room today would have something of a deteriorating back that you could point to. It just gets worse and is aggravated on the assembly line. I see people in the auto plants, say in my riding, who are just leaning over and putting a windshield in. Well, after 25 years of doing that a back can go. I am wondering if that is not the cause.

Again, I am just curious. There is an implication that the system is starting to award for nonwork-related things and that is a fairly serious charge or a serious suggestion. I am wondering if you have statistics to back

it up, because I guess I have a different feeling from what I see day to day, that is all, in terms of what might be the explanation for that increase.

Mr. Wadsworth: As opposed to a lot of the high-speed equipment, what we are finding is that many employers are now using high-speed automation as a means of eliminating a lot of the manual dexterity that was used in the past, for the very reason that whether it be overtime allowances, statutory holiday pay, unemployment insurance premiums or workers' compensation assessments, machines do not inherently have those costs.

Particularly in regard to safety standards and workers' compensation, if you have a high-speed machine that can take it right off a line to package it, break it, almost to the point of shipping, the reality is that you cannot afford to have people doing any repetitive jobs whatsoever, because the financial consequence is that your company is going to get hit with a \$60,000 to \$80,000 pension. It just takes a couple of those and you are into a double assessment, and that is the reality.

Mr. Carrothers: I wonder if the reason for that automation does not have to do with other factors than the pension, but that type of change to the assembly line might even solve the type of problem.

Let's turn to the bill here. You brought up the noneconomic award again and I was not quite sure if I understood the point you were making. You seemed to support a formula type of mechanism for coming to that noneconomic loss, but I was not clear whether you were supporting the formula in the act or suggesting a different one. If you were suggesting a different one, how would you change it?

Mr. Wadsworth: We believe the formula as set out in the bill is adequate.

Mr. Carrothers: All right.

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Mr. Wadsworth: It still recognizes an impairment measurement, but we are not aware of any system that will take us away from an impairment measurement.

Mr. Carrothers: No, and this is a simple way to do it.

Mr. Wadsworth: We like it for its simplicity and its clarity.

Mr. Carrothers: Just as a final question, you suggested a change to clause 45(4)(b) which, as I read it, essentially folds that award for noneconomic loss into any sort of wage loss. I am wondering if that does not take away from what these changes were supposed to do. The very words "noneconomic loss" imply that you are trying to give some compensation for pain and suffering, not a financial loss, and that would by implication be on top of any wage supplement or wage replacement pension given. I am wondering if putting in your change does not almost gut one of the purposes of this legislation, this dual award type of system.

Mr. Wadsworth: It is our understanding that section 45 would deal with the permanent, and that any permanent system would deal with the pension. I guess your position would be that the amendment to clause 45(4)(b) would also address the 90 per cent wage loss, but I do not think anything turns on

that, because for example, if somebody is off, he gets that 90 per cent. They can only be off once. If they are off again through a reactivation, it is no longer an issue of, "Well, they've got more pensions to make up their amount." The question is, they are still getting that 90 per cent wage-loss protection.

We do not see it as a problem. If the committee sees it as a drafting problem where it is being put in on the amendments, hopefully, you can just understand the concern we have, that it deals with the noneconomic as opposed to the wage loss.

Mrs. Marland: You talked about the employees who are back working at the same job after they have received a pension for a disability.

Mr. Wadsworth: Right.

Mrs. Marland: What do you see as a solution in dealing with that? Everybody would want the employee to be back working. If they have a disability that has been compensatory and then they are back at the job, it probably is not for a long term.

Mr. Wadsworth: Again, we tend to turn back to the medical profession and say that if there is a degree of impairment, then it should be recognized. The question is, how severe is that impairment if the person can go back to performing his previous job? I guess that is the question on which, unfortunately, we turn back to the committee and say this is a problem we have. The only recommendation we have would be to do exactly what the Minister of Labour (Mr. Sorbara) is proposing, provide for a permanent pension where there is measurable impairment of disability.

The problem oftentimes turns on this question of impairment.

Mrs. Marland: It always has.

Mr. Wadsworth: It is terrible. We are getting into the situation where employers are going in with information to suggest whether or not impairment is there. We are getting into intrusions by means of security services. We do not believe in indignity either to employers or employees, but the reality of the situation is that sometimes that is the only avenue available to us.

Mrs. Marland: Do you mean security services where they go out and take photographs of you painting your eaves troughs and stuff?

Mr. Wadsworth: Painting your home, going out in your shopping mall.

Mrs. Marland: Is that quite extensive, really?

Mr. Wadsworth: It is picking up. For example, in our groups, they pass out cards of security firms.

Mrs. Marland: Oh, really.

Mr. Wadsworth: I am bringing it to your attention because it is getting to be a problem. It suggests to you, I think, some of the adversarial situations in the system, and the concerns are such that employers are even spending \$5,000 or \$6,000 per claim to deal with the question of impairment.

Mrs. Marland: I know we are supposed to have one question, but Mr. Carrothers had two.

This whole aspect of trust is terribly important. When you talk about the new employee, of course, you cannot deal with a physical handicap, but there is the requirement to undergo a physical examination. Perhaps the employee chooses not to reveal something that might be an impediment because he needs the job. He has a mortgage and kids and needs the job, so he is not going to tell the physician. However, in the long term, these employees may be putting themselves and their family at a greater risk by getting into something that really does disable them for any other kind of job in the future.

Is it too simple to suggest there could be a form developed that employees sign, saying that they have disclosed pertinent information and that they accept there might be some risk to them if they have not?

Mr. Wadsworth: I think some companies have tried that. It has not proven to be very successful with the Workers' Compensation Board. I do not think a piece of legislation is an appropriate place for it. It is certainly a well-intended suggestion for employers, but I do not think much turns on it.

For example, I do not believe it would be appropriate to even kind of suggest to employees that they could opt out of the workers' compensation system by signing the sheet. Some employees might perceive it that way, although the intention was merely to make sure they could perform that work.

Mrs. Marland: And that the employee was protected too?

Mr. Wadsworth: That is right.

Mrs. Marland: Thank you.

Mr. Chairman: The final comment to Miss Martel.

Miss Martel: I have a comment and a question. I go back to your notation on the wage-loss benefit, where you said that from your experience you believe approximately 20 per cent of all claims fall within this category; that is, where a worker returns to work and still has a pension. The reason I have been asking some of the employers this question is that your colleagues from the other employer council suggested in a newspaper article in early January that the figure was as high as 70 per cent. In the same article the Minister of Labour said he figured it was about 30 per cent. Now we have a figure of 20 per cent from you. In none of the cases have we seen anything to back up any of those figures. That is why I have been asking in particular.

Mr. Wadsworth: To clarify, that issue deals solely with what we would describe as intentional malingering, as opposed to those people who go back to their jobs with pensions. That is why I believe we have it under the wage-loss system as opposed to the noneconomic loss. Although you will recognize that I make some general comments towards the whole position on the first page, page and one half. Our intent is to bring intentional malingering to the attention of the committee.

Miss Martel: Okay. Let me go back to the point you raised on the very last page, near the top. You talked about a section of the bill, subsection 45a(1), where you said the words "or resulting in temporary disability for 12 continuous months" should be deleted. Are you suggesting

then that the limitation that is implicit in that section of the act be taken out?

Mr. Wadsworth: Yes, without doubt. What if, for example, someone is suggesting in a soft-tissue injury that things should be crystallizing in 12 months? We deal with the issues of chronic pain with the Workers' Compensation Appeals Tribunal, and it can occur over a long period of time. We do not think it is appropriate that a worker should be denied a pension if, for example, it is six months or if it is eight months; what if it is 18 months or 24 months? I think there is something wrong unless the medical profession can say of every person, that injury crystallizes at 12 months. If the medical profession cannot take that position, I do not think the time limits are appropriate in there.

Mr. Chairman: Mr. Wadsworth, Mr. Campbell, thank you for your presentation.

Members of the committee, we begin again at two o'clock. I remind you there is transportation provided at the front door at 4:45 p.m., which is the heart of rush-hour. I urge that when we adjourn this afternoon, arrangements be made for you to proceed forthwith to the front of the Legislative Building.

Mr. Dietsch: Mr. Chairman, you had a motion on the floor from early this morning that you wanted to deal with. I would prefer to deal with it now and have it finished.

Mr. Chairman: You are right. Thank you for that reminder. You are absolutely right.

The motion before the committee—as I read it, in consultation with our learned clerk—I believe is out of order since it is a repetition of an amendment that was made to a motion by Mr. Dietsch, I think, last Thursday. I am going to rule that motion in its present form out of order.

The committee is adjourned until 2 p.m. right here.

Mrs. Marland: Is the subcommittee meeting?

Mr. Chairman: No.

The committee adjourned at 12:10 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

MONDAY, MARCH 6, 1989

Afternoon Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr. Black

Cureatz, Sam L. (Durham East PC) for Mr. Wiseman

Nicholas, Cindy (Scarborough Centre L) for Mr. Brown

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Wildman

Sola, John (Mississauga East L) for Mrs. Stoner

Clerk: Mellor, Lynn

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Psychological Association:

Nash, Dr. Chris, Past President

Nielson, Dr. Warren, Chairman, Legislation Committee

From the Confederation of Canadian Unions:

Lang, John B., Secretary-Treasurer

From the Labourers' International Union of North America, Ontario Provincial District Council:

Strang, David J., Senior Assistant Business Manager

Rasso, Gerry, Local 183, Toronto

From the Retail Council of Canada:

Woolford, Peter, Vice-President, Policy

Berresford, Ron, with Knob Hill Farms

From the United Steelworkers of America:

Perquin, John, Staff Representative

Vaher, Enn

Durkin, Martin

Blair, Basil

AFTERNOON SITTING

The committee resumed at 2:03 p.m. in the Ontario room.

WORKERS' COMPENSATION AMENDMENT ACT (continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Mr. Chairman: The committee will come to order. I draw to the attention of the committee that when we get to Timmins this evening around 7:30 p.m., at which point I am sure members will want to dine, there has been an invitation from Mr. Pope's office to attend at his house somewhere around 8:30, if members wish to do that. They would like a phone call back.

Mr. Dietsch: What a delightful gentleman. Is he a representative of your party?

Mr. Chairman: Is there any interest among members in doing that?

Since we need to phone back, I will ask the clerk to come around and check with you in the next hour or so.

Mrs. Marland: Is it tomorrow we start at 8:20 a.m.?

Mr. Chairman: No, that is Wednesday morning in Sudbury.

Second—Mr. Dietsch will be interested in this too—we had a call from the office of the member for Sudbury (Mr. Campbell) saying that the Ontario Film Development Corp. is premiering a film in Sudbury Tuesday evening and Mr. Campbell can obtain tickets for the committee. They will need to know the names of those interested in attending. Unfortunately, it does not say what the film is, but that of course allows members to fantasize for a couple of days.

Think about that. I will ask Lynn Mellor to check with you in the next hour or so.

Our first presentation for the afternoon is from Chris Nash, the Ontario Psychological Association. Those of you who do not know Chris Nash should know that she used to live in Sudbury and has been known to take a partisan interest in the political process.

Mr. Cureatz: A Conservative, I am sure.

Mr. Chairman: I am not saying.

Dr. Nash: You have a bet on that.

ONTARIO PSYCHOLOGICAL ASSOCIATION

Dr. Nash: My name is Chris Nash. I am past president of the Ontario Psychological Association and I am very pleased to know that you are having these hearings. We have, within the association, a legislation subcommittee and Dr. Warren Nielson, my colleague, is chair of that committee. He has prepared for you the yellow briefing sheet and he will speak to the matters that we are raising and then we would be pleased to answer any questions that you have.

Dr. Nielson: To begin with, I would like to indicate that the Ontario Psychological Association is very supportive of Bill 162. We believe it contains a number of important improvements and benefits which workers will receive under the act. However, we have some concerns related to the delivery of psychological services.

A particularly significant change, and one of special interest to psychologists, is the inclusion of a definition of "impairment" which involves psychological damage which results from physical or functional abnormality or loss. Unfortunately, Bill 162 permits only medical practitioners to conduct assessment of impairments irrespective of whether the consequences of an injury are physical or psychological in nature.

Thus, as it is written, Bill 162 would exclude psychologists from conducting assessments of psychological impairment for the purposes defined in the act.

There is ample precedent, both in terms of established practices of the Workers' Compensation Board and in case law, for utilization of psychologists when questions of psychological impairment arise. Psychologists provide important assessment and treatment services to injured workers and these services should be kept available to injured workers through this legislation.

Coupled with the potential closure of WCB hospitals that employ a large number of psychology personnel, failure to include psychologists in the act would abrogate workers' rights to receive needed psychological services.

Bill 162 should specify psychologists as a profession of choice for the assessment of psychological impairment either by broadening the definition of "medical practitioner," a common practice in some jurisdictions, or by inserting the phrase "or psychological" between "medical" and "assessment" wherever these terms appear in the act.

Consistent with the Psychologists Registration Act, "psychological assessment" should be defined in the act as "an assessment carried out by a psychologist." "Psychologist" should be defined as "a person registered under the Psychologists Registration Act."

Bill 162 also makes reference to other assessments which are clearly within the knowledge and skill base of psychologists. Although psychologists frequently assess the personal and vocational characteristics of the worker, the prospects for successful vocational rehabilitation, and conduct vocational rehabilitation assessments, there is no reference to psychologists as persons who provide these assessments. The bill should be revised to specify psychologists as a profession which provides these services.

Finally, although the concept of psychological impairment has been introduced in this bill, this broader definition of impairment has not been extended to the health care provisions of the act; subsection 52(2). We believe that psychological health care should be included in this section along with other aids to physical health. Thus, subsection 52(2) should be amended to include the aid of psychologists under the Psychologists Registration Act.

Mr. Chairman: I gather what you are saying is that, although the bill makes reference to psychological impairment, it does not deal with who can best repair that impairment. It excludes psychologists.

Dr. Nielson: It refers to medical practitioners but seems to exclude others, including psychologists.

Mr. Tatham: Are you being used now by the WCB on cases?

Dr. Nielson: Psychologists are employed by WCB and work in hospitals like the one at Downsview, in quite large departments. Also, psychologists in private practice and in various hospitals in the province are asked periodically to do assessments for WCB, and very frequently to provide reports of the work they have done, assessments and treatment.

Mr. Tatham: Does that mean in every case, or how are you brought into the assessment?

Dr. Nielson: I am not sure how psychologists are brought into that. I do not know if there is a particular mechanism.

Mr. Tatham: Why would you be called in? For what reason would you come into the picture?

Dr. Nash: What currently tends to happen, if I may speak with reference especially to the north—where, as your chairman knows, psychologists can sometimes be thin on the ground—a typical situation is one in which a worker may be injured and is treated medically, perhaps for some time, often with fairly heavy drug treatment. There comes a point where somebody, suddenly, becomes inspired and says, "Maybe there's a psychological component here."

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That may be after the worker has suffered considerable pain for a long period of time. Even if, initially, that pain was more or less psychosomatic, induced by fear of using a particular organ or limb or whatever, by the time it becomes referred for psychological help in some circumstances it has become truly a physical problem and, although it requires a psychological treatment, it is very difficult to remediate. That is one situation.

The other thing is that there are situations where psychologists are referred to by physicians for assessment, but that is often if the physician happens to think about it. Now, with the new wording of "psychological" coming in in the act, that does open up the possibility of having those opportunities up front and as part of the suggested strategies.

Mr. Chairman: On page 7 of the bill, for members who want to refer to it, subsection 45(16), there is reference to establishing "a roster or rosters of medical practitioners." That would be one place where you would want to be included.

Dr. Nash: That would be one logical thing to do, yes.

Mr. Chairman: Yes, you mention that in your point.

Mr. Tatham: Isn't a psychologist a medical practitioner?

Dr. Nash: If you know about the proposed health professions legislation review process, psychology is included within the omnibus act as one of the health disciplines. It is in fact regarded as one of the senior health disciplines in that act. It refers to diagnosis as a licensed act, and

the scope of practice clearly covers, as worded in the proposal, the kind of things under consideration by this committee.

Mrs. Marland: It is rather similar to the use of chiropractic medicine, except that a chiropractor is not described as a medical practitioner in these terms. Is that not true? Maybe it is not even fair to ask you about chiropractors. We have been discussing workers' safety, and on this committee we have looked at it very extensively from the aspect of mining accidents. We did a whole report on mining accidents.

Now, as we are reviewing this legislation, some of our discussions with the Workers' Compensation Board would indicate that the Downsview facility has historically been operating with a rather closed mind, beyond the use of physicians and surgeons, whereas I can well see that psychology would be a very important part of the initial fast treatment for some injuries and the ability of the injured worker to cope with some of those injuries. We did discuss chiropractic in the same connotation. Do you feel now that this act is going to give that opportunity to injured workers as a very real option? I personally do not think either psychology or chiropractic has been in the past.

Dr. Nielson: The way it is worded, it would seem to me that psychologists and others are excluded from providing those services under the act.

Mrs. Marland: In spite of subsection 45(16), page 7, to which the chairman just referred, "The Lieutenant Governor in Council, on the recommendation of the board, may establish a roster or rosters of medical practitioners for the purposes of selecting medical practitioners to make medical assessments under this section"? Do you not think you are covered in that?

Dr. Nielson: No.

Mrs. Marland: Why?

Dr. Nielson: Because we are not medical practitioners necessarily, depending on how you define medical practitioners; we are health care practitioners.

Dr. Nash: If the health professions legislation review goes through, we would certainly be defined as health care workers, but we do not claim to have medical training. A psychiatrist has a medical degree followed by some post-graduate work. We have training entirely in psychology, at the undergraduate level, two post-graduate levels and then at a post-doctoral level. Our training is anything from eight to 10 years in psychology.

I happen to have a certain amount of medical and pharmacological training, but that is not officially part of my training as a psychologist. It just happened to be a glitch in my own training program. We are health care, not medical practitioners. Maybe that would be the other alternative, "health care" rather than "medical."

Mrs. Marland: Let's ask it another way. There would be a tremendous difference in fees between psychologists and psychiatrists, since psychiatrists are physicians.

Dr. Nash: Yes.

Mrs. Marland: I do not want to put you on the spot. Some of the psychological counselling that a psychologist would do would be quite similar to some of the psychiatric counselling that a psychiatrist would do.

Dr. Nash: And some of it would be, in my opinion, considerably more effective. My brother-in-law is vice-president of the International Association for the Study of Pain. He is actually a physician, but he works in Britain. His team includes psychologists and a number of other practitioners, including nurses in the community. I am going over to Britain to join in a convention that he is working on, because we have been working on a joint project for some time. But it is normally recognized in the treatment of chronic pain that psychology has a great contribution. In places where the medical care is not fee-driven, that is much more clearly recognized than, for example, in Ontario.

Mrs. Marland: In Britain, are they routinely practising the use of psychologists in injured workers' problems?

Dr. Nash: According to my brother-in-law, yes. In fact, I have visited his clinic and seen the kinds of things he is doing. He is working in Basingstoke, which is quite a well-known centre for that kind of thing.

Mr. McGuigan: I am just wondering if this omission of psychologists is any different from the previous act. The point I am coming to is that you have been recognized under the past act. Does this change the status?

Dr. Nielson: We were not really recognized under the past act. It had the same type of wording which involved "medical practitioner" and in that sense excluded psychologists.

Mr. McGuigan: So the omission is in both acts?

Dr. Nielson: Yes.

Dr. Nash: But on the other hand, there is the change now of the potential closing of the hospitals where there are large psychology departments working right in the hospitals. Of course, we do not have that in the north.

Dr. Nielson: You have also defined "impairment," which is a change from "disability," more broadly to include psychological types of problems. That was not the case under the act previously.

Mr. McGuigan: I was not suggesting you should not be recognized; I just wanted to get the background.

Mr. Philip: I have some empathy with your concern that what is being done is that psychological services, if we leave the legislation without the changes you are suggesting, would be the exclusive domain of a psychiatrist, because he would be a medical practitioner whereas you are the provider of a health service. Would your definition in any way be exclusive then of psychometrists or psychometricians, whatever you call the people who have a master's degree in psychology and who do testing and assessing?

Dr. Nash: Under the current Psychologists Registration Act, psychometrists work under the supervision of a psychologist, and under the

health professions legislation review the level of entry is one of the things being considered. The Ontario Psychological Association's position on that is not one of excluding the psychometrists. We are actively negotiating with them about level of entry, so that is not something that comes in here.

Mr. Philip: In your opinion, the amendments that you have proposed would not exclude the use of psychometrists, particularly in assessment work, which I think is probably where a lot of them would be doing a lot of their practice, is it not?

Dr. Nash: Yes, it would not exclude it, although of course it is usual for that kind of assessment, which has very serious consequences for the client, to be supervised by a psychologist. In fact, I believe in the hospitals it currently is supervised. I think the matter of who does it is something that is better covered under the health professions legislation review. Within this act, the important thing I think would be that—you mentioned psychological assessment being done by psychiatrists. In our experience, it is frequently done by physicians who have no training at all in any kind of mental health other than maybe a single course at the undergraduate level.

Mr. Philip: I can appreciate the point that you have made, that there are important services that can be provided better by a psychologist than by a psychiatrist, areas where the use of drugs is not helpful. By the same token, one could argue that the psychiatric social worker is another profession that could provide valuable psychological services to the same kinds of clients. I guess my question to you is, if we are struggling with opening up a closed shop for the medical profession, should we not open it up more than simply to your profession of psychologists, but also look at which other professions, such as psychiatric social workers, might be included under the definition rather than simply opening it up to psychologists?

Dr. Nash: First of all, I would like to emphasize that psychologists normally do work as team members, in that we work with a variety of professions, including psychiatrists and psychiatric social workers.

There are one or two areas particularly relevant to injured workers where the training in psychology is very specific, not thinking so much about counselling, but thinking particularly about desensitization, about changes in perception and behaviour modification in the sense of changing the perception and changing the actual belief that there should be pain in the first place, which is not exactly a counselling kind of intervention. What one needs, I think, is the ability under the act for there to be an appropriate response by various health care professionals. In particular, I think it would be inappropriate under the act for psychological impairment not to be able to be assessed by psychologists.

Mr. Philip: I gather that what you are really saying is yes, that perhaps while you are here representing a profession—namely, the psychologists—if we were to look at it simply taking your proposals, it might not be unreasonable to also look at the psychiatric social worker as another person who could provide a valuable service and therefore might be included in addition to including you people, your profession. Is there anyone else who, from your own experience, should be included? I mentioned psychiatric social workers.

Dr. Nash: Presumably the usual array of health care professionals; for example, the physiotherapists, occupational therapists and chiropractors.

There is a variety. All the health care professions that are currently being considered under the HPLR should be available as appropriate for the purposes of this act as well.

Mr. Philip: Thank you for an interesting brief.

Mr. Chairman: Yes, thank you very much for your presentation. It was interesting and different from the ones we ordinarily get. We appreciate that. It was good to see you again, Dr. Nash.

The next presentation is from the Confederation of Canadian Unions. I see John Lang here. It is good to see you again.

CONFEDERATION OF CANADIAN UNIONS

Mr. Lang: Accompanying me are Gina Martins, who is the president of the Canadian Textile and Chemical Union, and John Meiorin, who is the secretary-treasurer of the Bricklayers, Masons Independent Union of Canada.

Mr. Chairman: Okay. Whenever you are ready.

Mr. Lang: I will go through our brief and highlight the comments we have made. First, I want to begin by saying that the Confederation of Canadian Unions, I suppose like every labour organization in the province, has very, very serious concerns about Bill 162. We speak for a good cross-section of workers in the province. We have 10,000 members here and they are employed in textile, construction, mining, transportation, communications, hospitality and service industries. We believe all of them are going to be adversely affected if Bill 162 becomes law.

Mr. Chairman: I wonder if I could just ask you, before you go any further, because I think a lot of members of the committee might not know, exactly what the Confederation of Canadian Unions is and how you are different from other confederations or federations.

Mr. Lang: We are a labour central that has been in existence for 20 years. The first distinction from other centrals is that we have been formed mainly from breakaways from the American unions. We have been a centre that has been fighting for an independent, sovereign labour movement in Canada, something which when we started was quite unpopular, but which happily today is accepted by a wide spectrum of the labour movement. I guess it is also fair to say that we have tried to develop a different philosophy within the labour movement, of trying to build a more grassroots, rank-and-file philosophy or attitude in unions. Our movement reflects that spirit as well.

Our major union in the province is the bricklayers union. They represent 2,700 bricklayers in southern Ontario and Metro Toronto. They are the largest bricklayers union in the province. We have workers, employed at Falconbridge, in the Mine, Mill and Smelter Workers Union. We have the support staff at York University. The Canadian Textile and Chemical Union represents about 2,000 workers in the textile industry in southern Ontario. Also, they have expanded into the hospitality industry with the recent merger with another union.

Then we have unions in the federal jurisdiction. In transportation, on the railways, there are the dispatchers at Canadian National and Canadian Pacific. Also, in communications, there are the workers at CNCP Telecommunications. They are under federal jurisdiction, but those workers in Ontario come under the Workers' Compensation Act here. I believe I have

covered everyone in our organization.

It is no news to you that injured workers have been repeatedly calling for a reform of Ontario's workers' compensation system. Workers who have been injured on the job have for too long had to bear a double burden: the pain and suffering of a traumatic injury plus financial losses when they are unable to return to their former employment or find alternative work.

Workers have demanded full compensation for their losses or job security as the best solution to their dilemma. Bill 162, which has been presented as a major reform to this system, fails to meet either demand, in our opinion. If it is passed, it will leave current injured workers no better off and will put future injured workers in an even worse position.

The basic purpose, in our view, of Bill 162 is to reform the system by reducing its cost. The chief method to cut the costs is to reduce or even eliminate payments to injured workers. Injured workers will receive little or no benefit from the bill. In addition, in spite of a tidal wave of complaints about the administrative practices of the Workers' Compensation Board, complaints which I think the current government has been prepared to recognize, certainly a lot more willing than its predecessors, the government has still chosen, in this bill, to give the Workers' Compensation Board even more discretionary power to interpret and administer the new law as it sees fit. This will only lead to more hardship and frustration for injured workers.

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We find Bill 162 completely unacceptable as a solution to the problems of injured workers in this province. It fails to ensure that injured workers get access to the rehabilitation services they need. It fails to ensure that they find suitable employment. Its dual award system will ensure that even more workers will be undercompensated. It further strengthens the powers of the WCB and, as it was originally drafted, it seriously erodes the workers' rights to appeal WCB decisions to an independent tribunal.

On rehabilitation services, which the government has presented as being a big breakthrough, we do not look upon it like that at all. Rehabilitation has long been a key component of workers' compensation, but really it exists more in theory than in practice. Rehabilitation not only offers workers psychological benefits; it is also supposed to help reduce costs by getting more workers back to paid employment. Such programs may seem expensive in the short term, but the long-term gains of getting workers back to work are usually seen as cost-saving measures.

In Ontario, the Minna-Majesky task force recommended that all injured workers be given a statutory right to receive rehabilitation to help them put their lives together again. Bill 162 takes a different tack. It proposes to cut compensation costs not by expanding rehabilitation services, but by reducing workers' access. Despite the finding of the task force that the WCB would rarely provide these services to workers unless it were compelled to do so by law, Bill 162 continues to leave it to the discretion of the WCB to decide if a worker should get rehab services.

Even more alarming is the introduction of time limits on access to rehabilitation services. Under the current law, workers can enter rehab programs at any time. Under Bill 162, rehab services are available only to workers on temporary benefits, and temporary benefits are available only until a permanent disability is identified, and this is to be done within 18 months

of the date of injury. In other words, vocational rehab services, including assessments, upgrading, training, job search assistance and workplace modification, all vital in helping injured workers, are available for only 18 months after the accident.

If a worker is injured severely enough to be unable to participate in a rehab program before the 18 months' time limit expires, he or she loses access to these services. Similarly, a worker whose injury is immediately identified as a permanent disability will be ineligible for rehab services or, again, if a worker who begins a rehabilitation program is later identified as suffering from a permanent disability and thus is shifted to benefits under the wage loss section of Bill 162, she may find herself cut off from the program in midstream.

In short, fewer workers than ever will get access to rehab services under Bill 162. The only possible rationale for this is to save money or rather to shift the cost of rehabilitation from employers to injured workers, or to the public at large if the individual worker has to turn to other social agencies for help.

Reinstatement and Re-employment: Injured workers have long demanded the right to re-employment. Bill 162 does very little to satisfy this demand. It does provide a statutory right to be reinstated, but the right is so hedged as to amount to very little in practice. First, it excludes construction workers. This represents over 300,000 workers in an industry where many injuries occur.

Second, it excludes workers in small businesses which employ fewer than 20 people. These workers are also excluded from the Occupational Health and Safety Act, which gives workers some control over workplace accidents. So these workers have little protection on the job and, if they are injured, no right to be rehired.

Third, Bill 162 leaves it to the Workers' Compensation Board to make regulations to exclude from the right to be rehired any other groups of workers as it may see fit. Given our experience with the Workers' Compensation Board, we are not confident that the board will act with the interests of workers uppermost in its mind. In fact, we are very fearful of giving the board this type of discretionary power, given its record.

Fourth, the right to reinstatement does not extend to current injured workers. The obligation to rehire is not particularly onerous for employers. Within two years from the date of the injury, the employer must reinstate the worker in his old job or, if this is not possible because of the worker's disability, offer him a suitable alternative job if one becomes available.

Many employers have already said they will be unable to meet this obligation, because the jobs that do become available are usually the most physically demanding and so probably unsuitable for an injured worker. In that case, employers can just wait out the two-year period. In its present form, Bill 162 imposes no obligation on employers to modify jobs to suit disabled workers. In fact, it gives disabled workers less protection with their former employer than they get under the Human Rights Code, which requires employers to "reasonably accommodate" job applicants who have a disability to the point of "undue hardship" for the employers.

In many cases, the right to reinstatement may prove hollow. Employers can just wait out the two years, saying they have no suitable job available, or they can hire a worker for six months and then fire him or her with impunity.

The dual award system is the centrepiece of Bill 162. If passed, the result will be to abolish life pensions for permanent disability and replace them with a once-only lump sum payment for noneconomic losses and a wage loss benefit which may or may not continue until the worker reaches age 65. In practice, the system will mean increased financial insecurity for injured workers and an administrative nightmare at the WCB. The Confederation of Canadian Unions opposed the introduction of this system in 1985 and we remain opposed to it.

Lump Sum Payment for Noneconomic Loss: This lump sum is the only payment guaranteed under Bill 162. In most cases, the amount will be less than \$10,000 and so will be given as a once-only benefit. As the following example shows, it is a poor tradeoff for the loss of a permanent disability life pension.

A 45-year-old worker with 15 per cent disability and pre-injury net earnings of \$26,805 would be eligible, under the current law, for a permanent partial disability pension of \$3,619 for the rest of his life. The capitalized value of this is \$49,841. Under Bill 162, the same worker would receive a once-only lump sum payment of \$6,750 in recognition of noneconomic loss, but he gets no guarantee that he will be adequately compensated for actual loss of earnings in the future as a result of the injury.

Continued Involvement of WCB Doctors: Despite widespread mistrust of Workers' Compensation Board doctors, under Bill 162 they will continue to assess the percentage of permanent impairment in deciding what the appropriate noneconomic loss award should be. Instead of the much-reviled meat chart, they will use a "prescribed ratings schedule" to be drawn up by the WCB itself. Workers have little reason to be confident that their situation will improve in these circumstances.

Under the current law, there is no limit on the number of times a worker's permanent impairment assessment can be reconsidered. Under Bill 162, a worker gets only two chances in a lifetime. This restriction hurts workers who have deteriorating conditions and younger workers who may use up their two chances and then face further deterioration as they get older.

In addition, Bill 162 denies workers who are dissatisfied with the WCB's assessment of the degree of physical impairment the right to appeal the decision to the Workers' Compensation Appeals Tribunal. The board has the final say. I recognize there has been some indication this will be changed. I will refer to this later.

In principle, we have no objection to compensation for noneconomic losses, although we can see problems as outlined above. However, under Bill 162, these payments are the only sure thing the worker gets because of the serious flaws in the second part of the dual award system, the wage-loss benefit.

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Under Bill 162, workers who suffer a permanent partial disability have no guarantee they will not suffer a serious decline in their post-injury earnings. The wage-loss benefit will be based not on the actual difference between a worker's pre-injury and post-injury earnings but on the difference between what the worker was earning before the injury and what the Workers' Compensation Board thinks he or she should be earning afterwards, regardless of what the worker's actual wage loss is.

We already know how the WCB is dealing with supplements under the current section 45. Workers are seeing their supplements reduced or are being denied supplements on the basis of what the WCB deems the worker to be capable of earning. We see no reason to expect the WCB to change its practice after Bill 162.

Review of wage-loss payments: Contrary to what the government's background paper implies, the wage-loss benefit, once set, is not guaranteed until the worker reaches age 65. Bill 162 says the benefit is payable only "up until the worker reaches age 65" if the WCB "considers it appropriate." The WCB will review the payment at least at year two and year five after the initial determination.

The purpose of such a review is presumably to ensure the worker is not falling farther and farther behind, but in practice, these reviews become increasingly problematic as the years pass and it becomes more difficult to make the link between the initial injury and the worker's subsequent financial situation. In these circumstances, the WCB's tendency may be to use these reviews as another opportunity to cut costs by reducing payments.

The review system also can act as a disincentive to workers to take jobs, especially those with higher wages. If the worker gets laid off, it may be difficult to know how much of a part was played by the injury. A higher paying job means a reduction in benefits, and if the job ends, the WCB is likely to deem the worker to be capable of earning that much in the future and so reduce benefit payments further.

The review system will also create administrative backlogs, as has already been acknowledged in Saskatchewan, and will only add to the frustration of injured workers. Such delays are already anticipated in Bill 162, which provides for the reviews to take place on the second and fifth anniversary of the initial determination "where possible." Thus, the review is mandatory but the time frame is not. Workers will be kept in suspense under what Professor Terry Ison has called a "sentence of perpetual probation."

Increased insecurity in old age: Under the current law, a disability pension is payable for life.

Under Bill 162, wage-loss payments are terminated at age 65 and replaced by a retirement payment based on 10 per cent of the value of any wage-loss payments made. Since the amount of these payments is uncertain, so will the amount of the retirement pension be uncertain.

Under the current law, a worker can receive a temporary supplement as long as he or she is "available for" or "co-operating in" a rehabilitation program. Under Bill 162, supplements will be available only to workers who are actually engaged in a "WCB-authorized" program which began within three years of the accident. As has already been noted, rehabilitation services are only available to workers on temporary benefits under Bill 162.

Older worker supplements will be specifically restricted to those aged 55 and over. Past WCB policy allowed them, in some cases, to workers as early as their late 40s.

Supplements: Bill 162 will give earnings supplements in cases where a worker's loss of earning capacity is significantly greater than usual and (1) the worker is deemed unemployable by the WCB or (2) the worker has gone back to lower-paid work but is unlikely, in the opinion of the WCB, to benefit from

vocational rehabilitation.

Bill 162 does represent an advance in that it removes the age limit for these supplements. However, the amount the worker can receive is uncertain. Bill 162 sets the amount according to the Old Age Security Act. This amount is subject to the same two-year and five-year reviews as the regular wage-loss benefit, and therefore to the same inherent uncertainty discussed earlier.

The WCB's administrative practices and legal interpretations have been the focus of overwhelming criticism for decades. Even the government, in its background paper, agrees that the WCB has in the past treated injured workers unjustly.

Nevertheless, Bill 162 gives the WCB even more power by restricting workers' right to appeal to the Workers' Compensation Appeals Tribunal and by leaving it to the WCB to draft regulations for the new law's details, including what factors to consider in determining an injured worker's deemed wage loss and which employers will be exempted from the obligation to reinstate injured workers.

The mandatory review of wage-loss payments will further allow the WCB to monitor injured workers for years and keep them in a state of perpetual uncertainty about their financial future.

The Confederation of Canadian Unions remains fundamentally opposed to the measures contained in Bill 162. The changes proposed by the Minister of Labour (Mr. Sorbara) on January 19, 1989, which would remove the restrictions on appeals to WCAT, broaden the choice of physicians who can assess workers' injuries and require employers to provide modified work for an injured employee do not in any way meet our basic objections.

Bill 162 does not constitute a reform of workers' compensation. It will make an inadequate system more onerous for injured workers and will allow employers to shift even more of the costs and hardships of workplace injuries on to the victims—the injured workers of Ontario.

Mr. Carrothers: I was intrigued by the presentation. I want to ask a bit about the cost and the rehabilitation. I guess I am a bit surprised because the testimony this morning seemed to imply that this system is going to be incredibly expensive. In fact, I think at least one of the witnesses seemed to imply that this would drive all industry out of the province, so I am intrigued that you are suggesting it is going to reduce the costs. I want to get to the bottom of that a bit.

I think, if I understand your presentation correctly, that you are pointing at the rehab as being where these costs are going to be saved, in your view. When I went through this, subsection 54a(5) seemed to me to really expand it. It is going to expand rehabilitation because it is going to cause the board to have to talk to everybody about whether he could use rehab, which is quite a bit different from the present system.

I would have thought the result of that, even though there is still some subjectivity—I take your point here in that subsection—would be to cause many more people to be exposed to and be examined or asked if they would need it. I am wondering how you would feel that is going to reduce the rehab costs, when in fact it seems to broaden the market, if I could use that term.

Mr. Lang: First, we see it reducing the costs both in rehab but .

also, and perhaps more importantly, in the pensions that are paid to workers. The point about rehab is that what we have here is a charade, particularly if you take it in the context of what the Workers' Compensation Board has done over the past 20 years. We do not have a statutory right to rehabilitation, which is what workers in this province need and deserve. We have the authority of the board to assess somebody, whether he needs it at all. That is not going to cost them very much. That is all we have here in this bill, and that is what is wrong with it.

Mr. Carrothers: Is that not a significant change to the present situation?

Mr. Lang: No, it is a joke. We are not dealing in an arena of good faith here. If we do not have it down in black and white, nailed down, we have nothing. I hope I do not have to sort of berate you with that point. Surely you are aware of what is happening to workers in this province under workers' compensation.

Mr. Carrothers: We are, and what I am trying to do is contrast this morning's testimony with what you are giving, because it was quite different.

Mr. Lang: I was not here this morning, but I guess I could expect where it was coming from—

Mr. Carrothers: The point made this morning was that the cost of this new system will be so great that it is going to bankrupt business. I am rather intrigued about those two points of view. I am really trying to get to the bottom of that and trying to find out what is really happening here with this, because what I am getting are two almost completely opposite suggestions as to what is going to happen.

Mr. Lang: I am not going to pretend that I can come here and really talk costs with you. We have not done that costing. Perhaps there are others who have.

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Mr. Carrothers: You did make a pretty strong allegation here, which is why I am asking you.

Mr. Lang: Yes, but what we are talking about is what is here in the bill, what rights we have in the bill, and what you have is the right to an assessment, not the right to rehabilitation.

Now, I think workers have the right to be rehabilitated if they are injured on the job. Okay? So let's not fool around with that; let's just have that right. If that is going to cost money, well, that is going to be a cost of doing business here, but in the long run rehabilitation can save money.

What we are really dealing with fundamentally, I think, is a very cavalier attitude to workers and their lives and their health, that it is dispensable, that it comes cheap. We are not much different than people in Bhopal. The lives of workers are also cheap in Ontario, and that is the attitude.

Mr. Carrothers: If that section 54a(5) were changed to remove the words "if the board considers it appropriate" and make it mandatory, would that then change this significantly for you?

Mr. Lang: If the—I was not intimating—

Mr. Carrothers: Well—

Mr. Lang: Not that the assessment be mandatory but that the rehabilitation be—

Mr. Carrothers: No. What it says is, "The board shall contact every worker...within 45 days...and the board shall provide such services to the worker if the board considers it appropriate to do so." As I said, it has subjectivity still in it. If those words of subjectivity were removed and it just said "the board shall provide services to the worker," does that then turn this around for you?

Mr. Lang: Yes, I would consider that a significant improvement.

Mr. Carrothers: As I said, it just seemed to me that in fact this expands the access to rehab far beyond what I see happening right now under the present legislation. This is why I am having trouble—

Mr. Lang: But where does it do that?

Mr. Carrothers: Everybody is to be contacted. Right now, they have no right to even be contacted on it. Everybody is to be assessed, and at this point, that is not even something that happens for most people. I have a great deal of trouble getting people who come into my office even getting assessed for rehab, so this will change that dramatically.

Mr. Lang: Well, maybe if we were dealing in a different world I might be able to agree that is a step forward, but from our experience with the board, it is not going to amount to very much. We will have a whole lot of people being assessed and it will end there.

The board has not over the years been very responsive to the needs of workers, and I think that a different attitude with really creative rehab that had some backing in law would also in the end—I mean, there is money to be saved there if you can get a worker back to work. We recognize that and employees recognize that, but it requires taking on an attitude of a responsibility, which I fully recognize the employers do not want. They do not want any part of that.

I do not think it is unreasonable to say that the tradeoff for being injured on the job is to have that protection. Employers have to learn that in a civilized society they have to assume those responsibilities, but the only way they are going to do that is if it is there in law. They are not going to assume this themselves. They will not do it voluntarily.

That is why I say that unless it is there in the statutes and not just an assessment, we are not really talking about very much. I do not think the costs are going to increase much at all from what is in this bill.

Mr. Carrothers: I guess—

Mr. Cureatz: On a point of order, Mr. Chairman: Just being a supplementary member and it being far from me to bring up such judicial, interesting aspects of the proceedings of a committee, are you planning to designate time to the various caucuses? I just notice you have a very full agenda.

Mr. Chairman: So far, we have been trying to give one question to each caucus and then if there is time after that we will keep going, but generally speaking, it is working down to about one question per caucus.

Mr. Carrothers: Is that a polite way to say you want to cut me off?

Mrs. Marland: You have had four.

Mr. Chairman: Thank you, Mr. Carrothers.

Mrs. Marland: I just want to say to Mr. Lang that this is a very good brief because he has taken every issue and laid it out very clearly and answered it.

I also want to say that I happen to believe injured workers in this province have a right to rehabilitation because I think injured workers have a right to be able to be rehabilitated in order to earn for themselves, which ultimately means that if they are self-supporting it costs everybody less, including the subsequent welfare system if their compensable injury is not compensated adequately, and they do not have to go to look for other systems of support.

I think rehabilitation is in everybody's best interests. Morally, I think it is the right of the injured worker to have that kind of help and be able to get on with his life. The right to rehabilitation is a very peculiar subject, because there should be a right for the employer to insist that his workers be rehabilitated so that they are useful again. It works very well on both sides, as far as I am concerned.

Anyway, I want to ask you, on page 6 where you are dealing with the dual award system, which actually is a system that I, personally, have a lot of difficulty with—I will be listening very carefully for the next six weeks to find out what the overall opinion is on it. First of all, I think it is unfair that they lose this when they get their old age pension.

Mr. Chairman: Page 6?

Mrs. Marland: Yes. When you are dealing with the lump sum payment, are you suggesting the injured worker might prefer to have the guarantee of his lifetime pension and not take the lump sum payment? Is that what you are saying there?

Mr. Lang: I gave one example that obviously supported my point, but in most examples I have run through, the straight mathematics of them are that workers are worse off under Bill 162 in terms of the cash.

We have argued in the past that the workers' compensation system had to take into account pain and suffering and so on, but what they are proposing here is a way of cutting the amount of money that would go to workers for their pensions, and for most part they are worse off.

I understand that the basic argument of the employer is that if somebody is injured and is able to return to his regular employment and earn his regular wage, then he should not be getting this 15 per cent or 10 per cent pension for life, but I do not accept that argument. I know workers in those situations who are popping pills all the time because of the back injuries they have received. The injury is permanent, so the pension should be permanent.

Even more so, I see workers, and still lots of workers—in fact, John Meiorin, sitting here right beside me, was injured at work and has a bad back and has not received a cent from workers' compensation. Okay? Those workers still outnumber the supposed lucky ones who have a pension and about whom the employers are saying this is unfair. Well, it is not unfair. Their injuries continue. It has been assessed as being permanent, so the pension should be permanent.

Mrs. Marland: You are saying they would forfeit the lump sum and go with the permanent pension.

Mr. Lang: Certainly in this formula I definitely would.

Mrs. Marland: How does that—this is a second question—protect the survivors? With a lump sum payment, should the injured worker predecease his spouse or dependent children, at least there is some money there for them. If it is a lifetime pension, is the surviving family protected?

Mr. Lang: Not now; not for an injury. I stand to be corrected but I think that is right. But what we are talking about are small amounts here.

Mrs. Marland: If an injured worker receives a lump sum, that is money he has, and if he succumbs earlier than he would have if he had not been injured, then there is at least a lump sum that he has received.

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Mr. Lang: But we are talking \$10,000 here when we are talking lump sum. You know what is going to happen. In most cases, someone will go out and buy a car a year earlier or something. I do not really think the problem that you present is going to be one that will affect a lot of workers, a lot of families.

Mr. Cureatz: Mr. Chairman, if I might—it is not a question—I do want to say to the witnesses that as a Conservative member, from time to time our party is maybe not necessarily noted in the forefront of the labour field, but I can tell them, as a member who prides himself in looking after the people from the city of Oshawa whom I represent, I have a great many Workers' Compensation Board problems through my constituency office. I want to tell you that the areas you have hit are the exact areas that my office staff confronts every day, with the degree of frustration that you have brought forward.

When I saw the new legislation coming forward, I just felt that anything was better than the frustrations we are having.

Mr. Philip: Do you charge them legal fees?

Mr. Cureatz: No, I do not; none whatsoever.

Mr. Chairman: You are making it difficult for the chair.

Mr. Cureatz: It is all free, nonpartisan legal advice and trying to give instructions to my constituents, I say to Mr. Philip.

Mr. Tatham: Good old Sam.

Mr. Cureatz: Of course, you cannot convince Ed of anything anyway.

Mr. Chairman: Miss Martel, would you convince Mr. Cureatz to yield the floor?

Mr. Cureatz: I am finished.

Miss Martel: Thank you very much, Sam, for that insight. A couple of questions, please, and I will try to be brief.

The people who are presenting should have been aware that some of the concerns the employers raised about increased costs did not necessarily have a great deal to do with rehabilitation. They were very much concerned with the increased ceilings and how much that was going to cost them. That information should have been made available to you earlier on. In any event, let me ask you about the future loss of earnings, the wage-loss payments that you have outlined on page 8.

We had some discussion when the board was before us about whether these wage-loss payments were going to be set for life, and the board implied that after the five-year review, if there was a wage loss, that would be fixed, up until age 65. My reading of the bill is that the board can review this at any time it considers appropriate in the circumstances. I am wondering if you can reply to what your reading of that particular section is. Is the payment fixed or can the board review at any time?

Mr. Lang: My reading was similar to yours, but I have not heard the board give its explanation or the ministry its interpretation of it.

Miss Martel: Your feeling is the same as mine.

Mr. Lang: Yes, I think I have said that.

Miss Martel: I would like it written, etched in stone.

Let me just ask you, even if rehab became mandatory—and it is something that we have been harping on for a while in the light of Majesky-Minna—and that section was made a little bit better, where would you stand on this bill?

Mr. Lang: The dual award system would be the thing. We would maintain our position on it. I say that because, speaking for myself and others whom I know in the labour movement, we were thinking that we had sort of won the battle on some of this stuff on rehab. It was a big disappointment when this bill came out.

I was just thinking as I was sitting here that I have been involved in the labour movement for 20 years. My first involvement was in helping workers in Sudbury who had been injured, helping them with their claims. It has been a constant problem. In almost 20 years, there has been a tremendous amount of organizing and protest. Workers have got organized, and there was a sense that we were going to get some real changes and real reforms.

In 1985, in Bill 101, there were some definite improvements, but this just turns it all back again. That is our overall feeling towards the bill, and getting rehab services in there solid is not, in my view, enough. This really needs to go back and a bill needs to be drafted that is going to deal with the problems of the Workers' Compensation Board system and make real improvements in it. This contains a lot of real setbacks, there is no question.

Miss Martel: Thank you very much.

Mr. Chairman: Just before we must conclude and go on to the next presentation, on page 6 of your brief, at the bottom you talk about the "capitalized value." If I understand that correctly, what it means is that the \$3,600 comes out to \$49,000 if you take into consideration that the worker is 45 years old and the life expectancy is perhaps 70. If you take the lump sum payment of \$6,750, is there any capitalized value of that or is it simply \$6,750 period?

Mr. Lang: No, my understanding of the bill is that is what he gets, \$6,750 period. That is finished.

Mr. McGuigan: The comparison is hardly a fair comparison if you capitalize the \$6,700.

Mr. Lang: To \$49,000.

Mr. Chairman: No, the other way around. I think what is bothering Mr. McGuigan is that in one case, as I understand it, the \$3,600 you get every year for life; the \$6,700 you get only once. Therefore, even if you invest it at 10 per cent—you could invest the \$3,600 at compound interest for the rest of your life too and get it every year.

Mr. McGuigan: No, he has already done that. That is the capitalization.

Mr. Chairman: Okay.

Mr. McGuigan: I come out with a figure of well over \$30,000.

Mr. Lang: That is what the \$6,750 is worth over 20 years.

Mr. McGuigan: Yes.

Mr. Chairman: Okay. I think we are going to have to do this at another time.

Mr. Lang: That is still two thirds.

Mr. McGuigan: No, but my only point is as a matter of fairness in making a comparison.

Mr. Chairman: Mr. Lang, thank you and your colleagues very much for your presentation before the committee. We appreciate it.

The next appearance was to be from the Retail Council of Canada. They are not here yet—they may be over at room 151—but we do have here the Labourers' International Union of North America, which is prepared to make its presentation at this time. This is the Labourers' International Union. I wonder if the gentlemen would introduce themselves and then you can get on with it.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA
ONTARIO PROVINCIAL DISTRICT COUNCIL

Mr. Strang: My name is Dave Strang and I am spokesperson for the Labourers' International Union of North America, Ontario Provincial District Council. I have with me Gary Caroline, general counsel for our largest local, Local 183; Bernie Carrozzi, business manager of our Ottawa local, Local 527;

and Brother Robert Leone, business manager of our Sarnia local, Local 1089. Joining me shortly will be Michael O'Brien, also with Local 183. Mr. O'Brien is here. Gerry Rasso is counsel with Local 183. We anticipate Brother Marino Toppan, a compensation rep with our Local 506, our other Toronto local, will be coming in a few moments.

Mr. Chairman: We appreciate your agreeing to come on early.

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Mr. Strang: For those of you who are not familiar with the labourers' union, we have in excess of 33,000 members working primarily in the construction industry in Ontario. We are active in every sector of the construction industry in all parts of the province. We run a hiring hall system which covers the entire province.

We also have an extensive system of training funds. Our largest training fund, Local 183's training fund, is actively involved in rehabilitation training. Our hiring halls regularly deal with the problems of members who have been injured and are continuing to look for work.

In addition, we have a number of locals that employ full-time staff to assist members and former members with their compensation problems. Local 183 has four full-time people in that role, Local 506 has another and a number of other locals assign business agents to work on a part-time basis with compensation problems. We also support local clinics and refer our members there. We are all too experienced with the problems of the compensation system.

Mr. Chairman: I think you understand our time problems this afternoon, so take the half hour as you see fit.

Mr. Strang: Okay, I will try to be brief. Our fundamental position on Bill 162 is that we have some serious reservations about the loss of the guaranteed pension. We also have some very serious reservations about the amount of compensation available for noneconomic losses. In fact, those amounts would seem to be considerably smaller than equivalent awards for people who suffer car accidents.

However, today we are simply going to deal with the way we see Bill 162 meeting the policies the minister has stated it is supposed to meet. He indicated it was supposed to improve rehabilitation, that it was to provide some reinstatement rights and to provide 90 per cent wage-loss pensions with, as I say, token payments for noneconomic loss. In our view, the bill simply does not do that.

The bill suffers from a number of fundamental problems. The first one is that the whole wage-loss system is premised on a comparison between the person's actual pre-accident income and his post-accident potential. That is how the deeming provision works. If somebody is able to earn a particular level of income, he is deemed to be earning that and that is compared to what he was actually earning before the accident. This must be unfair to most employees, because obviously your actual income will generally be less than your potential; most people simply are not working at their potential. Worse, your potential after the accident does not necessarily have any relation to what your actual income is.

The second concern we have is that apparently the mechanism for using the deeming provision in calculating the wage-loss pension will be roughly

similar to the mechanism that was introduced a year ago to determine subsection 45(5) supplements. That deeming provision has proved extremely restrictive. We have two problems with it.

First, the very introduction of that deeming provision for 45(5) supplements flies in the face of what is supposed to be the policy under this bill. While the minister was putting in a bill that said we should shift money to workers who were suffering a larger wage loss than was compensated for by their fixed pension, the compensation board, without any change in the legislation, changed what at that time was about a 13-year interpretation of subsection 45(5) and took money away from those people. Up until about a year ago, a lot of our members who were in the worst straits—they could not work and were not getting a large enough fixed pension—at least had the option of going to supplement. That was taken away. That gives us a really fundamental problem, because we can never know what this bill means.

If the compensation board could change a 14-year-old interpretation, how are we to know precisely what this bill means? We assume that, since the language is so similar, they will apply the same rules they have applied to subsection 45(5) supplements when dealing with the wage-loss pension. What they have been doing there is saying, "Look, if somebody earns a particular amount of money at any time after the accident, that is the minimum potential we are talking about."

I ask you to consider what advice we are going to have to give our members if this bill passes in its present form. A member comes in, he is injured and he says: "I need some money. Try to find me a job." We have, as I say, a very extensive hiring-hall system. We might well be able to find him a job for a period of time. If we do find him, say, a sweeper's job someplace, he works for a couple of months. Obviously he gets laid off relatively quickly, because the people who are able to do the greatest variety of jobs stay.

That person will be laid off, will be unemployed. The chances are we will not be able to keep him working the way we would a normal construction worker. His wage-loss pension just will not exist because he will be deemed, under these deeming provisions, to be able to work as a construction labourer at our full rate, \$18 per hour.

The effect of the bill is going to be to force us to advise injured workers, "At least until you've had your final reassessment after five years, you simply cannot try to stretch yourself, because all you're going to be doing, if you are successful for a number of months, is wiping out your potential for a pension." That is our fundamental problem with the wage loss pension.

We think it is unfair. We think it hinders rehabilitation. In fact, it seems that the compensation board simply has not learned from its experience with the compensation hospital. You cannot sit there and assess somebody and expect him to try to rehabilitate himself, if every time he makes an effort you cut his benefits.

We have a concern with the appeal process. The bill suggests that a number of items will not be appealable to the Workers' Compensation Appeals Tribunal. Now, the minister has apparently made an announcement indicating that will change, so I will not dwell on it. But we are—and we do in our brief, and you can read the items in detail there—calling for a repeal of section 86n. That is the section that allows the corporate board of the WCB to overrule WCAT.

This goes to the point I was making earlier: unless you have an independent adjudicative body, we can never be sure what the Workers' Compensation Act means and, worse, you can never be sure. I think you have to remember that this change in subsection 45(5) amounts to an administrative body reducing a level of expenditure without coming to the Legislature. This Legislature cannot control the WCB if you do not have some sort of body establishing a consistent scheme for interpreting the act. It goes almost to Magna Carta.

With respect to the reinstatement rights, in the 1970s, Local 183 went on strike to retain the right to reinstatement for its members in the construction industry. They were successful. As a district council, we have included reinstatement provisions in every major province-wide collective agreement that we have. They are all construction agreements. They cover employers of all sizes. We cannot understand why, when the government has chosen to grant reinstatement rights, the construction industry ought to be left out, because there is no question that reinstatement rights are perfectly viable in the construction industry.

As I say, our industrial, commercial and institutional agreement covers most of the major general contractors in the province. We have collective agreements in all the sectors. Reinstatement rights are in all our major collective agreements. The reinstatement rights we provide are better than the ones in the act. You will see at the back of our brief there is a clause, a model clause that we actually have in our heavy construction agreement in Toronto.

Quite frankly, we would suggest that if the government wishes to put reinstatement rights in, it look to reinstatement language that already exists, because that is our second problem with the reinstatement provisions in the proposed bill.

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There is no realistic enforcement mechanism. A year's compensation payments as an enforcement mechanism for reinstatement is totally out of whack with the enforcement provisions for most reinstatement provisions. I think one must recognize that reinstatement provisions are not uncommon. You have them in our collective agreements, under the Labour Relations Act, under the Human Rights Code, under the Occupational Health and Safety Act. All of those are enforced after a proper hearing by the courts, and the enforcement is not some fine; the enforcement is that the person must be rehired.

The final point I would make is that notwithstanding the statements that this bill will enhance rehabilitation, there is no right in the bill for an injured worker to require rehabilitation services. In our view, that is as serious a failing with the bill as any other because in our efforts to rehabilitate people, and we have rehabilitated members, we have found that very often the best advice you can give an injured construction worker is for him to leave construction, make a plan, go someplace else and start afresh in an industry where his injury is not going to be an ongoing impediment.

Under this bill there is nothing that allows an injured worker to say: "This is what I want to do with myself. You help me get back some of that lost potential I had when I was injured."

I would like to let Gerry raise another point that I think is of some considerable importance.

Mr. Rasso: Another concern we have is the effect of moving from a statutory and fixed amount of money you can receive to one of discretion and uncertainty in terms of wage loss. We see with subsection 45a(2) that an injured worker can be monitored until he or she reaches the age of 65. It seems the last assessment would be at five years, but there is nothing in the act to prevent the Workers' Compensation Board from continuously and for ever monitoring a worker, because it says he may receive compensation as the board deems appropriate.

Our concern is the effect that will have on a worker. The fact is that a worker is now tied to the workers' compensation system until he reaches 65. As well as inhibiting rehabilitation, which Mr. Strang pointed out, in terms of any positive change in his life, it can get him cut off. There are two other factors.

The first is the monitoring. The fact that he can be assessed at any time will create a lot of stress and anxiety in a person. Uncertainty is extremely stressful. That in turn does not contribute to a person's good health. Uncertainty and stress can cause sickness.

Second, a person's mobility rights are seriously affected. That is a very serious concern for our union because we have a lot of recent immigrants from Italy and Portugal. Previously, if you received a permanent fixed pension you could take that with you. With the replacement of a wage loss where you are expected to actively participate and stay in the province for assessment and monitoring, if you leave the country, which often many members of our union do, you have lost any entitlement to funds.

Most people who immigrate to Canada do so for economic reasons. If you come and you get hurt permanently and it seems to you that you will not be able to do well financially, there is nothing else to keep you in this country. So the best thing for a lot of people is to go back to their home country. If they do that, they are cut off from any workers' compensation that they are legally entitled to.

What happens is that it forces you to choose between workers' compensation benefits you are entitled to or deciding to leave the country and go back to your home country, which for most other reasons is probably the more positive choice. In fact, any choice, any lifestyle change you want to make will affect your workers' compensation and it will negatively affect you.

Mr. Chairman: Okay. Anything else?

Mr. Strang: If you have any questions, we would be happy to answer them.

Mrs. Marland: I am wondering, Mr. Strang, if you would elaborate a little further on page 3, item 5, "An injured worker must not be deemed to earn income from a job which was not both suitable and actually offered to the injured worker when calculating the injured worker's wage-loss pension." I realize that you go further into that farther on when you are talking about deemed wage loss.

You give the example of the injured worker who was given the job of sweeping. Particularly in the construction industry, if there is a downturn in

construction, I assume, or any shift of numbers that are needed, you describe that as being the first job to go. Is that what you mean when you say "a job which was not both suitable or actually offered to the injured worker"?

Mr. Strang: No, actually. There are two distinct problems here. One is that under subsection 45(5), the current supplement section, the board's policy over the last year has been to use a deeming provision.

What will happen is that the board will look at the jobs that are available in the economy, will look at the injured worker and make an assessment of the worker and will say, "You could do this job." They look and they say Statistics Canada or whatever says, "This job is available," or, "These labouring jobs are available and you can labour," or, "Security guard jobs are available and you can be a security guard."

They will then go to the injured worker and say, "We are deeming you to have the income of the average security guard," if the security guard is the one that is chosen, but the injured worker may well never have even considered becoming a security guard, or if he has considered that, he has never gone—there just is nobody there saying, "Here, you can become a security guard."

That is a fairly generic job, but in the case of a construction worker, for example, it may well be that they assess somebody and say: "You could fit in here as a construction worker. You could be a construction labourer. There is just some labouring work that you cannot do." Construction labour is a fairly wide job classification. They then deem the person to be able to do a construction labourer's work and earn the construction labourer's rate.

Unfortunately, the particular individual does not have access to one of those jobs, or if he does, he is competing with perfectly healthy construction labourers and of course an employer is going to want the maximum flexibility when he hires a construction labourer. He is going to hire the one who is perfectly healthy.

What we are saying is that if you are going to have a deeming provision, and quite frankly we have, as I say, very serious reservations about the whole concept, you have to at least try to be fair to the individual. You have rehab counsellors. If they find a job, if they go out and phone around and find a job that is actually going to be offered to him, okay, maybe you can say, "If the guy just turns it down, maybe he is just trying to live off the pension and not work." But what is happening now is that people are being deemed to be doing jobs or able to do jobs that they do not have and that they do not have access to. They are jobs that exist, but there is a whole job search process they must go through to get them.

Mr. Chairman: I do not want to cut the remaining groups short, so I think we had better move on.

Mrs. Marland: I understand.

1530

Miss Martel: Very quickly, two questions: In terms of reinstatement, the minister said when questioned about the construction industry that it was going to be too difficult to try to have injured workers go back to their former employers, given different project sites, etc. I want to ask you if the

Minister of Labour (Mr. Sorbara) ever talked to your union or your district council about how reinstatement could be worked out.

Mr. Strang: He did and we suggested the same thing we are suggesting here, our clause.

Miss Martel: Was this before or after the bill was introduced?

Mr. Strang: We spoke to him after the bill was introduced. If there was any consultation before, I do not think anybody here was involved in it.

Miss Martel: In your opinion, it could have been done, but he should have talked to you about it before the bill was drafted.

Mr. Strang: I think I am safe in saying that the clause we have proposed would have been suggested to him at any time he consulted with us.

Miss Martel: Okay.

Mr. Strang: It, or something very similar to it, is a clause we have in most of our agreements. Our position on reinstatement has been clear for—when was Local 183's strike on the subject?

Interjection: Eight years.

Mr. Dietsch: Are you talking about the appendix A clause, just so I am clear?

Mr. Strang: Yes, that is right.

Miss Martel: The exemption of the construction industry, yes, that is right.

Mr. Dietsch: Yes, the appendix A clause.

Mr. Strang: We have one of our clauses appended as appendix A to the brief.

Miss Martel: My second question concerns rehabilitation. Let me ask you if you know that under the bill rehabilitation is not a statutory right for workers. Do you think the Workers' Compensation Board, in its goodness, is still going to go about and provide increased services in the light of this bill?

Mr. Strang: We do not see anything in the bill that suggests there will be any increase in services. I think the right to rehabilitation is quite different than simply the board's providing services. When a man or a woman is injured, he or she loses a tremendous potential. What we are worried about happening under the bill is that they will be required, if they are to avoid losing their pensions by virtue of the deeming provision, to accept whatever work is available, and that simply may not be the best choice for an injured construction worker.

We have had many members injured. Our business managers, our business agents, have tried to keep them working in the construction industry. You can do it for so long, but then other men are injured and there are only so many places you can slide people in. If the economy tightens up, there just are no

places to slide people in. If you are going to rehabilitate somebody, it may be better to say to him, "Look, you should simply get out of the business."

I know our business manager in Kitchener had considerable success with a number of his members for whom he had been fighting for supplement claims by simply saying: "You're going to have to get out of the business. We'll find an educational program. We'll find some other industry for you to work in and just move you right out." We were very successful there. He said he got about 34 fellows actually back employed.

Mr. Chairman: Can we give the last question to Mr. Carrothers?

Mr. Carrothers: I wonder if I could just explore further this reinstatement because I want to get a sense of how it would work in the construction industry. If I understand section 20 of the bill, what it says here is that a person will get work if work is available and he applies for it. I think "available" is deemed to mean that if somebody is working in that category, he will displace the person who came on after the injured worker was there and the injured worker will be put in his place. Is that it?

Mr. Strang: Basically, yes.

Mr. Carrothers: But there has to be some kind of job around. In section 54, the obligation put on the employer is to find the job, full stop. It is quite a different obligation that is in the act, and I am just wondering how this section of yours could work into that kind of very strong obligation.

Mr. Strang: First of all, our section in our agreement is an absolute obligation. If there is work within the classification and you can provide that work to the injured worker without displacing somebody who was hired before him—there has to be a balancing of the returning worker's right with the rights of other employees. This is a fundamental problem we have with the provision in the compensation act.

Under that provision, it is perfectly possible that what will happen is a young injured worker will come back and an older worker who needs the lighter job just as much as the younger worker will be out. The only difference will be that the older worker will not have any pension rights. We recognize you should not penalize the person who happens to be working alongside an injured worker any more than you should penalize the injured worker.

The other thing you have to remember is that the provision in our collective agreement lives in the environment where we have the Human Rights Code, and the Human Rights Code now provides for modified work. It says you cannot discriminate against somebody because of a disability and you must make efforts to provide modified work. Given the fact that we provide a right for the person to come back and the Human Rights Code gives a requirement that you modify work, I suspect the two, working together, give a fairly significant protection. That modified work provision is fairly new. It was just proclaimed last year.

Mr. Carrothers: The Human Rights Code seems to apply through all of this. That is an issue we will have to deal with as a committee. I guess I still hear you suggesting that section 54, in order to work in construction—I mean, there is an obligation to find a job here, which I do not see in this contract. It is that if one is there, he can have it, which is much less. I do

not think you are suggesting section 54 be weakened in order to incorporate construction workers. Right?

Mr. Strang: No, certainly not.

The other problem we have with section 54 of course—

Mr. Chairman: Can we make this very brief. We are already cutting into the time of the next presenters and that is not fair to them.

Mr. Strang: No, we do not want to be unfair.

The other problem with section 54 is there is no enforcement mechanism for it either. It has been our experience, and we deal with reinstatement cases all the time, that if an employer is reluctant to take somebody back, paying the penalty of a year or less in compensation payments is simply not an unlikely thing for an employer to do. If you are going to have effective reinstatement, you have to have a provision that simply requires the reinstatement. You go to employers and say the guy is coming back, period. At that point, you negotiate on the basis that the fellow is coming back.

With this provision in section 54, you have to bring the guy back or you might suffer a small monetary penalty. At that point, you are going to be negotiating how big the penalty is. It is not a very effective clause.

I think there are also very serious questions about whether or not the Workers' Compensation Board can in effect charge a fine. We are not going to go into a major legal hassle about that, but the clause does not seem to us to have been very well thought out, quite frankly. In fact, the whole bill does not seem to have been very well thought out.

Mr. Chairman: Thank you for your presentation this afternoon. We appreciate it.

Mr. Strang: Thank you.

Mr. Chairman: The next presentation is from the Retail Council of Canada. I do not see Mr. McKichan, whom I often see here. Welcome to the committee. I hope you will introduce yourselves. Proceed.

RETAIL COUNCIL OF CANADA

Mr. Woolford: My name is Peter Woolford. I am the vice-president with the council. My first task, I guess, is to offer Mr. McKichan's apologies. He was called away to Ottawa today for a couple of trade issues that he had to be present for. With me I have this afternoon Ron Berresford from Knob Hill Farms and John Lefebvre, who is manager of health and safety at Miracle Food Mart. This is an opportunity for us to speak in front of the committee, which we are very thankful for. We will get fairly quickly to our points. Perhaps I might just introduce the council first.

Mr. Chairman: I was just going to remind people that we are on a schedule that is, unhappily, tight and we must stick to that.

Mr. Woolford: Also, my apologies for our being late for our three

o'clock appointment. Something happened in the translation between Queen's Park and Dundas Street. Sorry for that.

The council represents about 5,000 members across Canada and they include about 65 per cent of store sales throughout the country. That is probably proportional for Ontario as well, perhaps a little higher. We cover the full range of the industry—corporate, franchise, independent, large and small, all regions, all sectors, both food and general merchandise.

We are members of the Employers' Council on Workers' Compensation and we fully support its brief. I realize the committee has not yet heard the brief from the ECWC, but when you receive it I hope you will bear in mind that it carries our support as well. We believe they have evolved a fair and responsible position on the reform of workers' compensation.

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Just before I get to the substance of our comments, I would like to emphasize to the committee that there is no monopoly on compassion. Retailers do care about the wellbeing of their staffs. We do want a workers' compensation system that helps our injured workers to recover and return to work and productive life and that compensates them fairly for their suffering and their economic loss.

You have our written submission before you. My remarks will be quite brief and I will just try to cover the highlights. I will touch on the dual award system and a couple of other small items and then I will ask Ron Berresford to talk about the return to work and rehabilitation, because this is an issue of particular interest to retailers.

With respect to the dual award system, we believe the present system that we have in place now is not fair. A substantial number of workers are overcompensated; many with serious injuries are tragically undercompensated. The dual award system appears to be a way of getting around that. There will be a payment to an individual for the pain and suffering that he suffers and a separate payment that will compensate him for the economic loss, his lost wages.

We support both of those proposals in the legislation and we believe they are fair and right. These appear to be the only alternatives around that will change workers' compensation legislation in a way that will treat our employees more fairly.

With respect to the issue of maintenance of benefit contributions, we do support the recommendations in the legislation to require the maintenance of benefit contributions by an employer. Responsible retailers do it now. It is part of an employer's obligation and it is part of his connection with his employees.

Those are my general remarks. I would now like to turn to Ron, who will take you through our views on the return to work and rehabilitation.

Mr. Berresford: Talking in this room makes me think of how it must be to play squash in the kitchen. I do not know how our valued members get round these little tables on the side. It is kind of awkward.

My job is getting people back to work at Knob Hill Farms. I like to talk plainly, so I am going to do it that way. That is the way we do things at our

company, so I would like to keep it simple. When I get people back to work, it is productive. It has to be a collaborative effort with the company, the employee, the doctor, the union, if there is one, and the board. If all these parties do not play their role, it is the worker who suffers the most. This has been my experience in actually working in the field.

The benefits for the employer are obvious. As the employer, it is our responsibility to get them back to work; it is also good business, we have found, in retail. In fact, we are so committed to this that we have been innovative in this field of return to work.

As part of the presentation from us, you have a copy of our modified work program, which we have developed over the past four or five years from our experience. This has been developed by the people working in health and safety in the retail food companies. We have had a great number of successes in getting people back to work.

The program in fact is a generic one and can be used in any industry. It does, however, require the support of management and the unions, if there are any. Modified work can run up against seniority rules and we feel all the parties must have some desire and initiative to be creative in getting people back to work. I do not think we should be saying that we cannot work with seniority rules. I think there are ways of doing that with all the parties.

Some employees have an understandable fear of returning to work when they are still recovering. This business of being off work is a very complicated matter. It is a complex matter involving physical, emotional and a lot of other things such as family. If you do not understand all the facets of it, you are going to have difficulty in motivating people to return.

It is not our position that people do not want to return to work. In fact, our feeling is that most people do. However, there are occasions—far too many, in our experience—where other factors complicate this speedy return. Education is important.

Another key factor is rehabilitation, and we strongly support the focus on rehabilitation in the legislation. In fact, we do not think it goes far enough. We think there should be a vocational rehabilitation assessment in 45 days and a follow-up at the end of six months if the employee is not back to work.

The time factors we are talking about are far too long. It has been our experience working in the field that at six months, you are talking about people facing a chronic situation. We get involved immediately, the first week. We talk to the doctor as soon as we can. These time frames are not quick enough for us.

Make the employer part of the team. Give him the information on the rehabilitation assessments, give him the medical information that he needs to do the job. We have to have the information. There have to be incentives and support to help the employee get around some of the problems he faces in getting back. The worker, of course, should have some obligation to participate in the process.

The final question we have is whether the facilities are available to serve the needs of the employees. If you pass this legislation and people really get serious about bringing their employees back to work, it is our feeling that the facilities for physiotherapy and rehabilitation are simply

not there to do the job. In fact, the compensation board does not have the staff and resources now to implement the programs it has already initiated.

We find in our companies that we have to get involved ourselves. We send people to private clinics. It takes six to eight weeks to get an appointment with a specialist in Ontario at the moment. That is simply not good enough. These things have to change.

We suggest that this committee press the government for firm commitments on making sure the resources are available to meet the needs that are going to arise from this legislation and other requirements to get people back to work on time.

Mr. Chairman: Thank you very much for the directness and brevity of your brief. The retail sector has a relatively low assessment rate with the board, has it not?

Mr. Woolford: That is right. I think for the food business it is around \$3—

Mr. Berresford: It is \$2.26.

Mr. Woolford: —\$2.26 now, pardon me, and for general merchandise I think it is a little over \$1.

Mr. Berresford: We do not think it is low.

Mr. Chairman: No, I understand that.

Mr. Berresford: We want it to be lower.

Mr. Chairman: I think across the province the average is something like \$2.50 or \$2.60.

Mr. Woolford: So we would bracket the average.

Mr. Chairman: Right.

Mrs. Marland: I was interested to hear you say that your company gets involved right away, very early. Is it a characteristic of retail employers that they are instant advocates for their staff when there is an injury sustained on the job?

Mr. Berresford: I would say in the retail food sector it is getting to be that way. We have been working on this program for about five years now. For most of the major chains, I would say that is correct.

Mrs. Marland: If you have been working on it for about five years, has there been a change in those five years that you have seen where the direction is that you do not just leave the worker to his own means to deal with his claim and WCB?

Mr. Berresford: Absolutely. We have had dramatic turnarounds in the length of time people are off and in returning people to work who have been away for a number of years in fact. We are doing so well that we have just applied to get into experience rating so that we can reap the benefits of our program in retail food.

Mrs. Marland: That was what my next question was premised on. Can you see where it might be economically to the advantage of employers to have some way of expediting both the assessment and the treatment for their injured workers so that they do not end up going through this bureaucratic mess that injured workers in the province go through currently if they do it on their own?

Mr. Berresford: Absolutely. Yes.

Mrs. Marland: Do you know other large employers outside of the food chains who are doing what you are saying the food chains have been doing in the last five years in Ontario?

Mr. Berresford: Yes, we do.

Mrs. Marland: Could you give us some examples? You do not have to give the name. I was thinking of just the type of employer.

Mr. Berresford: I would be hard pressed to give it to you by industry. We have individual companies that we know are doing the same kinds of things we are doing. In fact, we get a lot of inquiries about our program. We spend quite a bit of our time going around to seminars and what not and presenting our program.

Mrs. Marland: Perhaps you can just think of a couple of companies. Are you talking about 200 and 300 employees or more?

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Mr. Berresford: Some are larger than that. Cyanamid Canada is one that comes to mind immediately. I do not know how many factories they have in Ontario but they are just in the process. McDonnell Douglas is another that is just beginning a modified work program.

Mr. Woolford: I think that given the complexity of the workers' compensation system, you will find that it tends to be firms with larger numbers of employees so that they have the staff tail behind them to actually carry out that kind of work. The corner grocery store, Beckers and a small independent retailer clearly do not have that kind of expertise or that kind of staff behind them. It is the same thing with the small manufacturing or resource concerns.

When you get to a larger-sized firm, there are a couple of things that come into play. One is that it makes good business sense to encourage the employee to come back. The second thing is that, by and large, employers do care about their employees and they do not like to see their employees simply warehoused, lying around on compensation.

Mrs. Marland: I think you are to be congratulated for the direction of the program that your particular aspect of employment has gone after, because if the Retail Council of Canada has started that initiative on its own and it does benefit the injured worker, it seems a very logical route. I do congratulate you for that initiative.

Miss Martel: I would like to go back to page 3 under the dual award system. In the third paragraph, last line, you say, "Employers see a system that overcompensates the majority at the expense of the seriously disabled worker." Can I assume that if you are making a statement like that, you have

some figures to give to this committee which would give us some idea of the overcompensated workers in your employ?

Mr. Woolford: I do not have actual figures. I think what we are referring to is the fact that a worker can go back to work with 100 per cent wages and still receive a pension.

What we are most concerned about is that with the way the meat chart approach works right now, you can have a worker who virtually cannot get back to a job but whose failure to be able to earn an income because of a disability is not captured in the system. That is just wrong. It is unfair and unjust.

Miss Martel: I appreciate that in the system you can have overcompensated and undercompensated workers, but I just think that the statement made is fairly provocative when you say that it overcompensates the majority. This is the third set of employers or people representing the employers' side whom I have asked for figures and none of them have had that when making that statement.

Mr. Woolford: You may get those from the Employers' Council on Workers' Compensation. I am hopeful that they will be able to share their work with you.

As I say, what we are simply trying to reflect here is the point that a worker who returns to work, back to his old job at full salary, also carries back with him under the present system a pension. When you think of it, that is rather unfair. It is unfair relative to the co-workers that that person works with.

Miss Martel: If he suffers a permanent disability for the rest of his life, I think he should be entitled to that. We are going to disagree on that.

Mr. Woolford: Under the new system, there is provision for a specific payment for pain and suffering. We fully support that. We think that is a good idea.

Miss Martel: But it is not ongoing, paid on a monthly basis, as the present one is.

Mr. Woolford: My understanding is that if it is large enough, it would be. I think that only if it is below a certain level, it is commuted to a single payment. I think that is at the individual's option.

Miss Martel: Let me ask you: I see on the back section, although you did not refer to it specifically on page 7, about the appeals to the Workers' Compensation Appeals Tribunal. The minister has stated that the two sections we were concerned about would be appealable to WCAT. I notice that your comment in that section was that you would find it inappropriate that a worker should be able to appeal to WCAT in terms of his pension award. Even though the minister has said that this will now be allowed, we do not have the legislative writing.

I would like to ask you why you would not support a worker being able to appeal to WCAT when he can appeal everything else and so can the employer?

Mr. Woolford: I guess we have simply found that the experience of

members has been that WCAT is such an involved, laborious process. The main people who benefit from that are the representatives, not the worker or the employee. It is a very complex, bureaucratic process with very little result at the end that is terribly beneficial to anyone.

Miss Martel: Would you not find it in some ways discriminatory, though, that you can take everything else to WCAT but not a pension award?

Mr. Woolford: There are review processes within the WCB. I think we feel those serve the needs of both employer and employee well now.

Mr. Chairman: If there are no other comments, thank you very much for your presentation.

Mr. Woolford: Thank you, Mr. Chairman.

Mr. Chairman: Our next presentation is from the United Steelworkers of America, the Toronto Area Council of the steelworkers. Is John Perquin here? John, if you would introduce your colleagues, we can proceed with your brief. Welcome to the committee.

UNITED STEELWORKERS OF AMERICA
TORONTO AREA COUNCIL

Mr. Perquin: Thank you very much, Mr. Chairman. I have on my left Martin Durkin, who is an injured worker and a member. I have on my immediate right Basil Blair, who is a member of the steelworkers. To his right is Enn Vaher, who is an injured worker and a member. We will be splitting the presentation among us. You can see it as it is laid out in the table of contents.

The United Steelworkers of America, Toronto Area Council, welcomes this opportunity to make a submission to your committee about Bill 162. We represent approximately 17,000 members in the Metropolitan Toronto area. Our members have told us quite clearly that this is a bill which they feel is one of the most offensive pieces of legislation ever to have been handed down in the area of workers' compensation in Ontario.

This bill does not represent a step forward for injured workers. Bill 162 moves the whole area of compensation backwards and will create in effect two classes of injured workers. There will be one group of injured workers who will be afforded the benefits under the current system of legislation, and then there will be those future injured workers whose benefits and care will be tied into the new legislation. They will be afforded substantially less than what currently exists.

In the very short time we have available today, I wish to highlight for you the main areas of concern that we have with Bill 162. The United Steelworkers of America will not be satisfied if Bill 162 is merely fine-tuned through a series of amendments. This brief represents our oral presentation only. A further and more complete critique is being developed by us for later submission to the committee, and that submission will incorporate this presentation.

Mr. Vaher: On April 20, 1987, I was involved in an accident at work which resulted in the amputation of my left thumb. It was reattached during a long and complicated operation, and I will never regain full use of it.

While on a physiotherapy program, I was told to report to the Downsview Rehabilitation Centre for an assessment which lasted one month. The day would start with a little physiotherapy, followed by occupational therapy consisting mainly of digital exercises and games, as well as woodworking projects. During the day, there were two sessions in the gym where they tried to turn me into an Arnold Schwarzenegger overnight.

Most of this program I found to be a waste of time, for I was not allowed to do anything that was work-related. I was employed in a steel fabrication plant at the time of my injury. When I finally complained, I was rushed through two days of testing and a quick interview. I was told that I was ready to return to work with restrictions. These restrictions included not being allowed to lift more than 10 kilograms with two hands. I was used to lifting more than that with one. There was not to be any use of the left hand for anything involving pulling and there could not be any work where I could not see what I was doing, because of nerve damage.

1600

The company was approached to set up some work for me. Its response was to the effect that because of my restrictions it did not have any suitable work for me. My rehabilitation counsellor then basically told me to go out and find a job, any job. My counsellor indicated to me that the company did not have to rehire me and it did not have to let me try to do modified work or even to try to do the same job I did before.

After much arguing with the rehabilitation counsellor, I was allowed an opportunity to be retrained for new skills, skills that had nothing to do with my former job at the time of the injury. My former employer has now terminated me and all my medical, dental and other benefits have been cut off. My new career will pay much less than what I had been previously been earning and will not likely provide me anywhere near the same levels of benefits I had once.

I see Bill 162 as an inferior piece of legislation. It does not go anywhere near far enough. It does not force employers to reinstate injured workers in their former jobs. Not even with the recent amendments to the reinstatement provision does an injured worker have a guarantee of obtaining work with his or her former employer.

The amendment proposes that employers be obliged to "offer injured workers modified work in keeping with the spirit and intent of the recent changes in the Human Rights Code." This statement is very vague indeed and will undoubtedly be subject to a great deal of varied interpretation. Bill 162 does nothing to get me my job back, not even any job, with my former employer.

If I were to suffer the same injury in the future and Bill 162 had been passed in its current form, I would not get my old job back, probably not even any job with my former employer. There is no real onus on the employer to do so. The proposed bill does not say whether or not the employer has to provide or create a new job altogether, nor does it say whether or not the former job has to be modified.

Employers should primarily be forced to modify an injured worker's former job so that it would be suitable for the injured worker's restrictions. Further, there should be no loss of income and benefits for the injured worker upon return to work, nor should there be a loss of seniority standing. If it is absolutely not possible to reinstate the injured worker in his or her

former position, then alternative work must be offered on a permanent basis, not just for the short term. In order to ensure that the alternative work is meaningful and not just the first thing that comes along, the injured worker should not suffer a loss of income and benefits when returning to work, nor should there be a loss of seniority standing.

If these provisions were a part of the Workers' Compensation Act, I would be back to work with my former employer today instead of going through a training program that will not provide me with an income anywhere close to what I could be earning as a steel fabricator.

Mr. Durkin: One year ago, I received a phone call from an individual who told me he was my new rehabilitation counsellor. He told me that changes had taken place at the board and it was no longer interested in becoming involved in any long-term rehabilitation. Because of these changes, he instructed me to investigate certain occupations which he deemed to be appropriate for me.

At our following meeting I explained to him that the occupations he suggested would provide approximately \$7 an hour less than what I was receiving in 1983. I told him that in order for me to have an opportunity in the future to earn an income similar to what I should be making, I would have to re-educate myself.

After numerous meetings during which I was told such things as not to expect that kind of salary any more and that my academic ability was lacking—based on results of testing performed by the board—I finally received a letter in late July which stated that the board had approved the course for which I had applied. A condition was attached to this approval: If I failed any one subject in any semester of the six-semester course, the contract would become null and void.

After I settled in at school and made my personal position and my objectives known to the faculty, it was suggested to me that I realign my courses in the second semester. This was to maximize my education to meet my long-term goals. By realigning the courses, I would specialize in one aspect of international business and I would be able to take advantage of a mandatory co-op program. This would not only increase my opportunities for employment but would save the board money in the long run.

The final decision, however, was not mine to make. The decision rested on the counsellor, and he did not want me to go to school in the first place.

After a meeting of the faculty, the rehabilitation counsellor and myself, I received another letter. This letter stated that I had chosen a particular course and that I was unco-operative with him in regard to using other avenues of rehabilitation. My abilities academically were questionable, but I was given the benefit of the doubt and allowed to attend school. In his opinion, there was no difference between the two courses as far as one being more advantageous than the other was concerned. Under these circumstances, he refused to allow any changes and there would be no discussion.

As a result of my injury, this individual now takes over the decision-making process for both me and my family. The decisions that he is now capable of making affect me for the rest of my life and I get no control over this. This individual has a university degree in psychology, but no work experience other than related volunteer work before getting a job at the board. He now makes decisions that I feel quite strongly he is not qualified

to make and peoples' lives are dramatically affected. These decisions not only affect the injured worker but they also affect their families.

Despite all these frustrations and lack of control over my own destiny, I am fortunate. Under the new proposals in Bill 162 rehabilitation refers primarily to the physical aspect of the individual and not re-education. If I had not gotten the ball rolling with regard to re-education before this particular counsellor became involved, there likely would not have been an opportunity for me to get re-educated. I would have been forced into a menial, low-paying job. There would not have been any chance of being able to earn the level of income which I had planned on earning in 1977 when I chose to work in the can-making industry.

It is my opinion that Bill 162 should be withdrawn and replaced with more comprehensive legislation which calls for an automatic right to full and comprehensive rehabilitation. Rehabilitation must include not only physical therapy, but it must also include: retraining for modified work with the former employer; retraining for another line of work when work cannot possibly be found with the former employer; education upgrading, if required; and whatever other educational means may be required for the new occupation. Full and comprehensive rehabilitation must begin early, no more than 45 days.

All of this is so that the injured worker can live with dignity and respect in the community among his or her peers and within his or her family.

Mr. Blair: Currently in Ontario, the pension rating system is based on an impairment-rating schedule more commonly referred to as the meat chart. This system has certainly not demonstrated fairness in compensating injured workers for their true level of disability. Injured workers are asking for a system that would realistically reflect the actual level of disability which they have incurred and which will fairly compensate them for that disability. Bill 162 does not do the job.

The government would have us believe that finally workers will receive a pension which compensates them for loss of enjoyment of life and for economic loss as a result of the disability. This is not so.

Bill 162 actually will result in a lower pension for the greatest majority of workers. The present system, based on the meat chart, will be replaced with a lump sum payment, also based on the meat chart. This lump sum will be worth significantly less than the value of the current pension an injured worker would receive.

A steelworker today who is 40 years old and suffering from a 10 per cent disability from a back injury would receive approximately \$180 per month if his average hourly rate was approximately \$12.50 per hour. This pension would be guaranteed for life and would be indexed annually under the current system. This is not a lot of money when you consider that the likelihood of coming up with a job at a similar replacement income is slim for someone with a back injury, or even a hand injury, as my two brothers with me today have suffered.

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Under Bill 162 this same individual would be eligible for a dual award. The lump sum award this individual would be entitled to would be approximately \$9,500, or approximately \$39 per month for life. This is a far cry from the \$180 per month under the current system.

To make up the difference, the government is proposing to introduce an additional pension to cover the wage loss suffered as a result of the disability. Under this system, the Workers' Compensation Board will look at the worker's age, education, vocational rehabilitation potential and training, among other factors. This is done to determine what type of occupation the injured worker could perform.

The injured worker will then be deemed to be receiving the earnings from that job, regardless of whether or not he or she actually has this phantom job. The pension will be based on the difference between these deemed earnings and his or her former, pre-accident earnings.

The steelworkers find this aspect of Bill 162 to be particularly offensive. People's entire futures will be left in the hands of one or two individuals in the board.

Pensions must reflect not only an individual's loss of life but also actual lost wages, not deemed lost wages. Bill 162 must be withdrawn and replaced with a new piece of legislation that will fairly compensate injured workers for their sufferings.

Mr. Perquin: You can see that with our limited amount of time, we have only been able to touch on a few of the areas with which we find fault. That is not to say that there are not more; 15 minutes does not allow us to fully deal with all the problems of the bill. For this reason, a more complete written brief will be submitted at a later date. Let me tell you that the steelworkers find it particularly difficult to say what they have to in 15 minutes.

Members of the committee, you have heard from two of our injured workers about the problems that they are currently facing with the WCB and that they have faced in the past. They have told you about their fears of Bill 162 and what the future could bring for them if this bill is passed through final reading.

Let me tell you that these two individuals are not unique. There are thousands of Martin Durkins and thousands of Enn Vahers in this province today experiencing the same kinds of frustrations and problems. Their concerns are shared by every one of their brothers and sisters present here today, as well as those who could not make it for this presentation.

You have also heard from Brother Blair, who has told you of his fear in the area of pensions. Those fears as well are shared by other members of our organization, both present here today and not.

It is interesting to note that both Martin and Enn have yet to be assessed for a disability level in respect to their injuries. Will they be assessed under the current legislation, or is the board waiting until Bill 162 is rammed through the Legislature? Both injuries occurred well over one and a half years ago and have been stable for over a year now. All things being equal, they should have been assessed for a pension by now.

Are there other injured workers out there in similar situations waiting to be assessed? Does the board have some kind of hidden agenda here to reduce the benefits that these individuals will ultimately receive in terms of a pension? I ask the committee to reflect on these questions.

The United Steelworkers of America Toronto Area Council wants to see

Bill 162 scrapped in its entirety. No amount of fine-tuning will rectify the insidiousness of this legislation. A totally new piece of legislation must be drafted which will make progressive changes to the Workers' Compensation Act in Ontario.

We feel that the Ontario government should enter into a comprehensive consultative process of a tripartite nature so that injured workers' concerns will be truly reflected in the changes. It would appear that Bill 162 reflects only the concerns of employers, and we, the United Steelworkers of America Toronto Area Council, find that particularly offensive.

That completes our submission.

Mr. Chairman: Thank you, Mr. Perquin, for your brief. It has obviously been well received. The first question is from Mrs. Marland.

Mrs. Marland: Let me just say at the outset that I think you have done an excellent presentation. You comment on the shortage of time and you have certainly made it very clear and easy to understand.

Martin, I want to say to you that you have to be some kind of special person to make the presentation you have made today with the kind of negative impact your counsellor must have had on you, apart from the injury that you sustained, which would be unbelievably negative for anyone. But to have somebody continually reinforce that your academic ability is lacking, I just find this appalling; because you were not told only once, obviously you were told many times. I commend you for the fact that you were able to ignore that kind of lack of professionalism by your counsellor. That kind of thing is intolerable in any circumstance.

You hit on the fact that this person has a university degree and obviously is wet behind the ears and has no experience, and yet is dealing with your future and your family's future. I know that your union is saying that the bill should be thrown out completely, but as you know, the likelihood of that happening, with the kind of mandate the government has at the moment, is not very realistic.

I am just wondering if there are amendments, other than the major issues that you have identified, which are being identified by many groups before the committee. Are there other aspects that you would like to see us try to incorporate in amendments, where something as important as the actual staffing and how people are handled—apart from the fact that it should not take a year and a half and that kind of nonsense, that we know and we agree with? But is there something that you feel we should be asking for in an amendment that would address that intolerable treatment of workers who actually need the help and go for help? I do not know who wants to answer that.

Mr. Durkin: I think the individual should have control over his own destiny. I know better for myself what my future goals are. I should not have to fight with an individual on the other side of the table who has been given a mandate through his superiors to follow a certain pattern. I am basically arguing with a stone wall. He has no authority to give me an answer without going back to his supervisors. Yet I do not have any input to his supervisors. So, if I get into a situation with my counsellor where we are at a difference as to what I feel is right for me and he has a different opinion, he goes back to his supervisors basically to plead my case. But if he does not agree with my case, I do not feel that I get a fair hearing from the people who are actually making the decisions.

Mrs. Marland: He conveys whatever he wants to convey and you do not have that input yourself?

Mr. Durkin: I do not have the input and I do not even know what he actually says to the people he is dealing with. I have no written information telling me that he has proposed what I have asked for, and I have no grounds to know whether he has done that or not.

Mrs. Marland: In your particular case, you really had a much higher goal than he was willing to allow you to have, which is just disgusting.

Mr. Durkin: I had a very high paying job. It has been a detriment, because they have told me never to expect that type of salary again; I have to bring my expectations down. I do not feel that is right. I mean, my injury did not affect my brain and I can still retrain myself and get into a whole new life. I feel they have blinders on and they are trying to keep me down. I do not feel that is right.

Mrs. Marland: Congratulations on what you are doing in spite of it all. We will see if we can try to address that one particular area of concern.

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Mr. Sola: I would like to commend you on your assessment of some of the drawbacks of the current legislation, but I think, at the same time, you must realize that Bill 162 is open to interpretation in several ways. I would just like to read a statement into the record and see what comment you can make on the statement.

This is by Gerry Bastien of the Canadian Auto Workers in Windsor. On a television interview on June 21, 1988, he is quoted as saying that he is ?? "cautious but positive about Bill 162. The legislation comes at a good time, when it is more difficult than ever for unions to get injured workers back on the job. Production levels are high and employers do not want workers who can't keep up. By forcing them to rehire, some workers may be back on the line sooner that expected."

Mr. Philip: What is the date of that?

Mr. Sola: June 21, 1988.

Mr. Philip: The day after the legislation was introduced.

Mr. Chairman: Go ahead.

Mr. Sola: This is another strong union with a union representative who fights very hard for the workers, and this was his interpretation, ?? "cautious but positive." It is not a strong endorsement, but still, that is the point of view he expressed at that time. I would like to give you a chance to reply.

Mr. Perquin: I guess every individual has a right to his own thoughts. We are a democratic society. As has already been pointed out, the comment was made the day after the bill was introduced. I question whether the individual had adequate time to thoroughly and comprehensively study what it says.

The steelworkers do not agree that the reinstatement rights that are

built into Bill 162 are adequate. A large number of employers are cut out of it, particularly small employers. The situation is that an individual must have at least one year's service with the employer, and under the amendment to Bill 162, there is some vague, airy-fairy language about human rights and modified work. We do not know what that means. We do not really hold our breath waiting in anticipation of good things, because we have not yet seen anything good come out of this ministry.

On top of that, if the individual does meet the criteria to be considered for reinstatement, if it does not work out, after six months he can be cut loose. We think that is not right.

Mr. Sola: I would like to make another comment. We had, just prior to your delegation, the Ontario Psychological Association. They presented a short brief here, which I think addressed one of the problems that you addressed; that is, of particular significance to them was the fact that the definition of impairment is broadened to include functional abnormality and any psychological damage arising from the abnormality or loss. So, the question that was raised in one of the briefs is answered in Bill 162. It is taking that into consideration.

I would like to point out one other thing. The Minister of Labour (Mr. Sorbara) has stated on several occasions in the House and at other functions that the—how would you say it?—absolute right of workers' compensation will be tied through regulation. You will no longer have arbitrary decisions made, as they are today. In the statement, you were saying the fellow goes back to his superiors to take up your case. You will be able to see in regulation under what grounds they come up with their decision. I think that will go a long way towards giving you a bit more bite to your counterattack.

Mr. Perquin: On the contrary, we feel that the regulations you are trying to refer to are regulations that are going to be put together by the board itself. They will be able to set their own regulations, administer their own policy, make up their own policy. That is precisely the kind of thing we are opposed to. They will have more discretionary powers than they have ever had before to do exactly what my brother here told you: completely control his life.

Miss Martel: A question on rehabilitation, please. Mr. Perquin, I understand that you do representation before the Workers' Compensation Board at the hearings level and the Workers' Compensation Appeals Tribunal. Let me ask, you in terms of rehabilitation, if the board is not obliged to provide that service, do you think the board is going to do so?

Mr. Perquin: My experience has been that no, it will not.

Miss Martel: Do you want to elaborate on some of the problems that your workers have had in terms of rehabilitation? I know the one brother already has, but you do other representations.

Mr. Perquin: I guess you could say the recent changes to the policy on section 54 have really opened the door, and what Bill 162 does is just open the door that much wider for what we feel is flagrant abuse of an individual's rights.

Prior to the changes in policy, admittedly, quite a lengthy time would take place before an individual would receive help from a rehab counsellor, but my experience was that in almost every case where educational upgrading

was required, it was given. By that, I mean quite often individuals would be in the workforce for many years and would need to polish up on their educational skills to get them back to today's grade-12 level, that type of thing. That would have been almost unquestionably granted. Where an individual needed more educational upgrading to pursue another career that would bring him roughly in line or relatively close to the former income, that was given, in many cases.

With the changes to the policy in section 54 and what Bill 162 is doing, that kind of rehabilitation process is not going to come nearly as easily. I suspect it will come very rarely. They will be aimed primarily at physically rehabilitating an individual and getting him back into a job, and as we say, any job.

Miss Martel: Are you talking about the policy that was implemented January 1, 1989?

Mr. Perquin: Yes.

Miss Martel: Okay. I do not know if we will have Leo Gerard before us at any point, because I do not know if he was granted standing. Let me ask you, at any point in time before this bill was introduced, did the minister have any conversations with the United Steelworkers of America about this bill and what he planned?

Mr. Perquin: He did not speak to me. That is all I can say. To my knowledge, he has never spoken formally to the United Steelworkers of America.

Mr. Chairman: On behalf of the committee, thank you very much for your appearance today. We will be hearing other briefs from the steelworkers as we criss-cross the province. On behalf of the committee, I appreciate the number of your members who have come out to be a part of the process today.

Members are reminded that transportation to the airport is at 4:45 p.m. in the front of the Legislature. If you wish to find your own way out, do not be there at 4:45 p.m.

The committee adjourned at 4:30 p.m.

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